

# EXHIBIT B

# David Counceller

## Trial Designations



**Counceller, David**  
**Counceller, David**

**2025-05-23**  
**2025-05-23**

|  |                 |
|--|-----------------|
| <a href="#">Defense Designations</a>   | 00:12:49        |
| <a href="#">Plaintiff Designations</a> | 00:05:34        |
| <b>TOTAL RUN TIME</b>                  | <b>00:18:23</b> |

|            |   |        |            |   |        |
|------------|---|--------|------------|---|--------|
| 2025-05-23 | <b>Counceller, David</b>                          | Page 1 | 2025-05-23 | <b>Counceller, David</b>                                | Page 2 |
| 1          | IN THE UNITED STATES DISTRICT COURT               |        | 1          | APPEARANCES:  |        |
| 2          |   |        | 2          | LITTLETON JOYCE UGHETTA & KELLY LLP                     |        |
| 3          | Civil action No: 1:23-cv-00327-JDL                |        | 3          | 2460 N. Courtenay Pkwy, Suite 204                       |        |
| 4          |   |        | 4          | 646-708-4844  |        |
| 5          |   |        | 5          | Attorney for Defendant Sig Sauer, Inc.                  |        |
| 6          |   |        | 6          |   |        |
| 7          |   |        | 7          | BY: JEFFREY RUSSELL, ESQUIRE                            |        |
| 8          |   |        | 8          | Portland, ME 04101                                      |        |
| 9          |   |        | 9          | jrussell@verrill-law.com                                |        |
| 10         |   |        | 10         |   |        |
| 11         |   |        | 11         | SALTZ, MONGELUZZI & BENDESKY, P.C.                      |        |
| 12         |   |        | 12         | One Liberty Place, 52nd Fl                              |        |
| 13         |   |        | 13         | Philadelphia, PA 19103                                  |        |
| 14         |   |        | 14         | shaaz@smbb.com  |        |
| 15         |   |        | 15         |   |        |
| 16         |   |        | 16         |   |        |
| 17         | for the State of Maine, via Zoom videoconference, |        | 17         |   |        |
| 18         | notice given.                                     |        | 18         |   |        |
| 19         |   |        | 19         |   |        |
| 20         |   |        | 20         |   |        |
| 21         |   |        | 21         |   |        |
| 22         |   |        | 22         |   |        |
| 23         |   |        | 23         |   |        |
| 24         |   |        | 24         |   |        |
| 25         |   |        | 25         |   |        |
| 2025-05-23 | <b>Counceller, David</b>                          | Page 3 | 2025-05-23 | <b>Counceller, David</b>                                | Page 4 |
| 1          | INDEX   |        | 1          | (This deposition was taken before Debra J. Fusco,       |        |
| 2          |   |        | 2          | Notary Public, via Zoom videoconference, on May 23,     |        |
| 3          |   |        | 3          | 2025, beginning at 1:10 p.m.)                           |        |
| 4          |   |        | 4          | VIDEOGRAPHER: We are now on the record.                 |        |
| 5          |   |        | 5          | The time is 1:10 p.m. Eastern Time on May 23, 2025.     |        |
| 6          |   |        | 6          | This begins the videoconference deposition of David     |        |
| 7          |   |        | 7          | Counceller taken in the matter of David Alan Cole and   |        |
| 8          | EXHIBITS  |        | 8          | Kimberly Cole versus Sig Sauer, Incorporated. The case  |        |
| 9          |   |        | 9          | number is 1:23-cv-00327-JDL, and is filed in the United |        |
| 10         | NONE  |        | 10         | States District Court for the District of Maine.        |        |
| 11         |   |        | 11         | My name is George Ellis, I am your remote               |        |
| 12         |   |        | 12         | videographer. Our court reporter is Debra Fusco, and we |        |
| 13         |   |        | 13         | are representing Esquire Deposition Solutions.          |        |
| 14         |   |        | 14         | Counsel, please state your name and who you             |        |
| 15         |   |        | 15         | represent, after which the court reporter will swear in |        |
| 16         |   |        | 16         | the witness.  |        |
| 17         |   |        | 17         | MS. DENNISON: Kristen Dennison from                     |        |
| 18         |   |        | 18         | Littleton Joyce Ughetta & Kelly, and I represent Sig    |        |
| 19         |   |        | 19         | Sauer, Inc.   |        |
| 20         |   |        | 20         | MR. HAAZ: Sam Haaz on behalf of David and               |        |
| 21         |   |        | 21         | Kimberly Cole.  |        |
| 22         |   |        | 22         | MR. RUSSELL: I'm also here, Jeff Russell,               |        |
| 23         |   |        | 23         | Verrill Dana, LLP on behalf of Sig Sauer.               |        |
| 24         |   |        | 24         | MS. DENNISON: Erica Esposito from Sig Sauer             |        |
| 25         |   |        | 25         | is also present.  |        |

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| 1          | (The deponent was administered the oath by the Notary Public.) |        | 1          | for the record to make sure everything is audible.       |        |
| 2          | DAVID COUNCELLER, after having been                            |        | 2          | We can only have one person speaking at a time.          |        |
| 3          | duly sworn by the Notary Public,                               |        | 3          | In the normal course of conversation, it is easy to      |        |
| 4          | was deposed and testified as                                   |        | 4          | anticipate what my question is and begin your response   |        |
| 5          | follows:   |        | 5          | before I have finished my full question. For purposes    |        |
| 6          | EXAMINATION  |        | 6          | of the record today, I would ask that you allow me to    |        |
| 7          | BY MS. DENNISON:   |        | 7          | completely finish my question before you begin your      |        |
| 8          | Q. Good afternoon, Mr. Counceller. My name is                  |        | 8          | response, and I will allow you to completely finish your |        |
| 9          | Kristen Dennison. I represent Sig Sauer in an action           |        | 9          | response before I begin my next question, okay?          |        |
| 10         | that's been brought against it by David and Kimberly           |        | 10         | A. Okay.   |        |
| 11         | Cole. We are here today pursuant to a subpoena that my         |        | 11         | Q. Great. We are going to try to be as quick as we       |        |
| 12         | office issued to you. Is that your understanding?              |        | 12         | can today with you. That said, if you need a break at    |        |
| 13         |  |        | 13         | any point in time, please let us know that, and we'll be |        |
| 14         | A. Yes, ma'am.   |        | 14         | happy to accommodate you.                                |        |
| 15         | Q. Okay. And thank you for your appearance here                |        | 15         | A. Well, I would really like to go put my ear plugs      |        |
| 16         | this morning.  |        | 16         | in at the moment.  |        |
| 17         | Have you ever had your deposition taken before?                |        | 17         | Q. If you want to go do that, you can step away and      |        |
| 18         | A. Not like this.  |        | 18         | go put your earplugs in, that's fine.                    |        |
| 19         | Q. Okay. Let me give you a few brief instructions              |        | 19         | A. I think I will because this is kind of new to me      |        |
| 20         | before we begin. We do have a court reporter                   |        | 20         | and I'm -- I need to sharpen up my hearing here real     |        |
| 21         | transcribing everything here today so I need to make           |        | 21         | quick so I'll be right back.                             |        |
| 22         | sure that all of your responses to my questions are            |        | 22         | MS. DENNISON: Let's go off the record a                  |        |
| 23         | verbal. In particular, I need an audible yes for a no          |        | 23         | moment.  |        |
| 24         | as opposed to a nod or a shake of the head. If you             |        | 24         | VIDEOGRAPHER: Going off the record, the                  |        |
| 25         | forget, don't worry about it, one of us will correct it        |        | 25         | time is 1:13.  |        |
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| 1          | (OFF RECORD)   |        | 1          | Q. Okay, great. And the oath that you took today is      |        |
| 2          | VIDEOGRAPHER: Back on the record. The time                     |        | 2          | the same as if you were testifying in a court of law.    |        |
| 3          | is 1:14.   |        | 3          | Do you understand that?                                  |        |
| 4          | MS. DENNISON: Okay.  |        | 4          | A. Yes.  |        |
| 5          | BY MS. DENNISON:   |        | 5          | Q. Great. Mr. Counceller, are you taking any             |        |
| 6          | Q. Mr. Counceller, can you hear -- can you hear                |        | 6          | medications that would prevent you from testifying       |        |
| 7          | everything okay now?   |        | 7          | truthfully and honestly to the best of your              |        |
| 8          | A. Yes.  |        | 8          | recollection?  |        |
| 9          | Q. Great. So I'm going to ask you some questions               |        | 9          | A. No.   |        |
| 10         | about an unintentional discharge that I understand you         |        | 10         | Q. All right. Did you review any documents to            |        |
| 11         | experienced a little over 10 years ago, and I need to          |        | 11         | prepare for your deposition here today?                  |        |
| 12         | have you answer my questions truthfully and honestly to        |        | 12         | A. No.   |        |
| 13         | the best of your recollection, okay?                           |        | 13         | <b>Q. Can you please state your full name?</b>           |        |
| 14         | A. Yes, ma'am.   |        | 14         | <b>A. David Joe, is J-O-E, Counceller,</b>               |        |
| 15         | Q. Great. If you don't hear my question, please let            |        | 15         | <b>C-O-U-N-C-E-L-L-E-R.</b>                              |        |
| 16         | me know that, and I will repeat it. If you don't               |        | 16         | Q. Where are you currently located, Mr. Counceller?      |        |
| 17         | understand my question, which is quite possible, please        |        | 17         | A. Connersville, Indiana.                                |        |
| 18         | let me know that, and I will be happy to rephrase it,          |        | 18         | Q. Have you ever been known by any other names?          |        |
| 19         | okay?  |        | 19         | A. No.   |        |
| 20         | A. Okay.   |        | 20         | Q. Do you reside in Connersville, Indiana?               |        |
| 21         | Q. If you answer one my questions, I am going to               |        | 21         | A. Yes.  |        |
| 22         | assume that you heard my question, that you understood         |        | 22         | Q. Mr. Counceller, have you experienced an               |        |
| 23         | my question, and that you answered it truthfully and           |        | 23         | unintended discharge with a Glock pistol?                |        |
| 24         | honestly to the best of your recollection; is that fair?       |        | 24         | A. Yes.  |        |
| 25         | A. Sure, yup.  |        | 25         | Q. When did you experience an unintended discharge       |        |

|            |  |         |            |  |         |
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| 1          | with a Glock pistol?                                     |         | 1          | A. On the Glocks.  |         |
| 2          | A. It was in January, 2014.                              |         | 2          | Q. Okay, great. And the Glock 23 pistol that you         |         |
| 3          | Q. What kind of Glock was involved?                      |         | 3          | were carrying in January of 2014, did that have a little |         |
| 4          | A. It was a Glock 23.                                    |         | 4          | blade or -- in the trigger?                              |         |
| 5          | Q. Was that your Glock 23?                               |         | 5          | MR. HAAZ: Objection --                                   |         |
| 6          | A. It was an issued weapon by my police department.      |         | 6          | A. Yes, we call it a little dog ear.                     |         |
| 7          | Q. What police department?                               |         | 7          | BY MS. DENNISON:   |         |
| 8          | A. Connersville City Police Department.                  |         | 8          | Q. You called it a dog --                                |         |
| 9          | Q. How long have you carried that Glock 23?              |         | 9          | A. If you'd like -- if you would like, ma'am, I          |         |
| 10         | A. Oh, several years. I was a -- I was the chief of      |         | 10         | could probably pull it up and show it to you.            |         |
| 11         | police at the time, and we had carried Glock -- Glocks.  |         | 11         | Q. Do you still have that pistol?                        |         |
| 12         | The -- the -- the Glock 23 was a little shorter model    |         | 12         | A. I don't have that one, but I have another one, a      |         |
| 13         | than the 22 that the original officers would carry.      |         | 13         | Generation 4, which is the same thing, just a newer      |         |
| 14         | Q. As chief of police -- was that for Connersville       |         | 14         | model. It's the same dog ear, same trigger, everything.  |         |
| 15         | Police Department?                                       |         | 15         | Q. Okay. All right. And in January of 2014, can          |         |
| 16         | A. Yes, it was.  |         | 16         | you tell me the circumstances surrounding your           |         |
| 17         | Q. As chief of police for the Connersville Police        |         | 17         | unintended discharge?                                    |         |
| 18         | Department, did you select the Glock 23 pistol?          |         | 18         | A. Well, I had stopped into a local gun shop here in     |         |
| 19         | A. No. It's -- it was done several years -- that         |         | 19         | Connersville, and the owner of the place is a friend of  |         |
| 20         | was like our -- I think that was our second issue. I     |         | 20         | mine, and there was another Glock, it was a 380, a       |         |
| 21         | think the first time we were issued back in '99,         |         | 21         | little bit smaller, and it was like a newer version.     |         |
| 22         | something like that. Then we carried -- I got the        |         | 22         | And I was looking at it, and I pulled my weapon out,     |         |
| 23         | Generation 2, then we went to the Generation 3. And      |         | 23         | carefully, and I was comparing the size, basically, for  |         |
| 24         | since then, they go to 4 and 5.                          |         | 24         | being carried for undercover or just plainclothes to     |         |
| 25         | Q. All Glocks?   |         | 25         | where it's concealed, and I was comparing it with this   |         |
| 2025-05-23 | <b>Counceller, David</b>                                 | Page 11 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 12 |
| 1          | -- with mine. And afterwards, I handed the weapon back,  |         | 1          | thousand incidents, that's what he told me, involving    |         |
| 2          | the weapon I was looking at, I handed it back to the     |         | 2          | something similar with drawstrings. So, any way, it --   |         |
| 3          | owner of the gun shop. And I went to holster my weapon   |         | 3          | it grazed -- grazed my upper leg right underneath my     |         |
| 4          | again in my holster, and I noticed when I put it in      |         | 4          | right leg and buttocks and -- and it -- just a graze.    |         |
| 5          | there, it was a little snug more so, but I had a jacket  |         | 5          | And so -- but did -- did catch me off guard and I -- you |         |
| 6          | on, a heavy jacket. And when -- I should say I had a     |         | 6          | know, the Glock is a good weapon, but it's a very        |         |
| 7          | jacket, but it seemed like I had -- I had a fleece       |         | 7          | dangerous weapon because they -- that little -- little   |         |
| 8          | jacket and -- on underneath the coat. Anyway, so when I  |         | 8          | dog ear and that trigger right there is -- they want to  |         |
| 9          | went to pull up my fleece to -- to hide the weapon, I    |         | 9          | call it a safety. It's not a safety, it's an activation  |         |
| 10         | had a -- my drawstring -- I had a drawstring that was    |         | 10         | switch because it's not gonna go off until something or  |         |
| 11         | hanging down on my right side, and I'm right-handed, and |         | 11         | a finger or something else is there, and it has to pull  |         |
| 12         | it's a right-handed holster. Somehow it got into that    |         | 12         | it flush with the trigger itself, then it will           |         |
| 13         | trigger guard. And when I went and pulled my jacket      |         | 13         | discharge. There's not any other safety -- safety        |         |
| 14         | with my right hand, on my right side, I went to pull it  |         | 14         | features with the Glock other than that, either with     |         |
| 15         | up to -- to -- to put my jacket over the weapon, the     |         | 15         | being closed with no weapon -- no rounds in it or -- or  |         |
| 16         | drawstring was in there and -- and it was caught in      |         | 16         | it's jacked open with no rounds in it. But that's the    |         |
| 17         | there. And when I pulled up with that jacket with that   |         | 17         | only safety feature it has, and I'm not real -- I never  |         |
| 18         | drawstring, it discharged. And there was a video that I  |         | 18         | was real sure about that.                                |         |
| 19         | had -- did with Channel 6 news out of Indianapolis, and  |         | 19         | MR. HAAZ: I'm going to just object and move              |         |
| 20         | I believe -- I was really just concerned about people    |         | 20         | to strike all the parts of the answer that relate to     |         |
| 21         | with clothing and carrying weapons. It happens -- this   |         | 21         | hearsay, and particularly with what the reporter said    |         |
| 22         | happens a lot of (sic) police officers, and I imagine    |         | 22         | and, you know, what he doesn't have personal knowledge   |         |
| 23         | it's happened with other people also. I don't know, but  |         | 23         | of.  |         |
| 24         | I know that the reporter did a -- did a investigation on |         | 24         | And, sir, there may be objections from time              |         |
| 25         | that, and at the time he -- he had roughly around a      |         | 25         | to time. They're just for Ms. Dennison and I to make a   |         |

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| 1          | record, that's all they are. So now that that's on the   |         | 1          | VIDEOGRAPHER: Off the record. The time is                |         |
| 2          | record, I turn the question back over to Kristen and     |         | 2          | 1:24.  |         |
| 3          | apologize for any interruption.                          |         | 3          | (OFF RECORD)   |         |
| 4          | BY MS. DENNISON:   |         | 4          | VIDEOGRAPHER: Back on the record. The time               |         |
| 5          | Q. Thank you, Mr. Counceller. I'm going to ask you       |         | 5          | is 1:25.   |         |
| 6          | a few questions to break that down a little bit, okay?   |         | 6          | BY MS. DENNISON:   |         |
| 7          | A. Sure.   |         | 7          | Q. Okay, Mr. Counceller, while we went off the           |         |
| 8          | Q. Let's start with, what kind of holster were you       |         | 8          | record, you went and retrieved the holster that you were |         |
| 9          | using at the time?                                       |         | 9          | wearing on the day of the unintended discharge. Can you  |         |
| 10         | A. It was a leather holster. It didn't have a            |         | 10         | put that holster up to the camera, to the video feed, so |         |
| 11         | strap. It just sat as -- as kind of like -- it was a     |         | 11         | that we can see it?                                      |         |
| 12         | warn leather. I mean it's a -- fit comfortable and       |         | 12         | A. Yes, (indicating). As you see, it's a black           |         |
| 13         | everything, but it was just really sitting down in -- in |         | 13         | leather. It's open here at the top and the -- I'm half   |         |
| 14         | the holster itself, and it was leather.                  |         | 14         | blind too. Anyway --                                     |         |
| 15         | Q. Okay. The holster -- do you remember the brand        |         | 15         | THE WITNESS: Honey?                                      |         |
| 16         | of the holster?  |         | 16         | UNIDENTIFIED ATTENDEE: Yes.                              |         |
| 17         | A. I got it -- I got it upstairs. I can --               |         | 17         | THE WITNESS: Can you read that -- the make               |         |
| 18         | Q. You have the actual holster upstairs?                 |         | 18         | of this holster? You might want to turn a light on or    |         |
| 19         | A. Yes.  |         | 19         | something.   |         |
| 20         | Q. Would you -- would you mind getting that, and         |         | 20         | UNIDENTIFIED ATTENDEE: Glock.                            |         |
| 21         | then we can take a --                                    |         | 21         | THE WITNESS: No, that's -- that's a Glock.               |         |
| 22         | A. Sure.   |         | 22         | UNIDENTIFIED ATTENDEE: Masters's --                      |         |
| 23         | MS. DENNISON: All right. Let's go off the                |         | 23         | Masters's Holder (sic).                                  |         |
| 24         | record for a moment.                                     |         | 24         | THE WITNESS: It's a what?                                |         |
| 25         | THE WITNESS: Be right back.                              |         | 25         | UNIDENTIFIED ATTENDEE: Glock The Masters's               |         |
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| 1          | Holder (sic).  |         | 1          | Q. Thank you. All right, okay. So, Mr. Counceller,       |         |
| 2          | THE WITNESS: Masters's Holder (sic).                     |         | 2          | that was the holster. I'm going to ask you about the     |         |
| 3          | UNIDENTIFIED ATTENDEE: 17, 22, 31.                       |         | 3          | information you gave about -- you said he told you about |         |
| 4          | THE WITNESS: Okay.                                       |         | 4          | a thousand instances of similar issues with drawstrings. |         |
| 5          | UNIDENTIFIED ATTENDEE: It's a Glock holder               |         | 5          | My question for you is, who is the "he" to which you     |         |
| 6          | (sic).   |         | 6          | were referring?  |         |
| 7          | A. I'll -- that's -- I don't know if you can see         |         | 7          | UNIDENTIFIED ATTENDEE: Rafael Sanchez.                   |         |
| 8          | that or not, but that's the make of it.                  |         | 8          | A. Rafael San -- Sanchez.                                |         |
| 9          | BY MS. DENNISON:   |         | 9          | BY MS. DENNISON:   |         |
| 10         | Q. Okay. And so that is a Glock --                       |         | 10         | Q. And who is Rafael Sanchez?                            |         |
| 11         | A. Glock --  |         | 11         | A. He is a reporter for -- was a reporter for            |         |
| 12         | Q. Glock Masters's Holster?                              |         | 12         | Channel 6 news. He's on a -- another network up in       |         |
| 13         | A. Yes.  |         | 13         | Indianapolis also now. I think it's -- I don't know      |         |
| 14         | Q. 17, 22, 31?   |         | 14         | what the -- I don't know what it is right now.           |         |
| 15         | UNIDENTIFIED ATTENDEE: 77.                               |         | 15         | UNIDENTIFIED ATTENDEE: He's an                           |         |
| 16         | A. I think it was 77 she said.                           |         | 16         | investigative reporter. He's --                          |         |
| 17         | BY MS. DENNISON:   |         | 17         | THE WITNESS: He's what?                                  |         |
| 18         | Q. Oh, 77, 33 -- or 77, 22, 31.                          |         | 18         | UNIDENTIFIED ATTENDEE: He's an                           |         |
| 19         | UNIDENTIFIED ATTENDEE: Yeah.                             |         | 19         | investigative --   |         |
| 20         | BY MS. DENNISON:   |         | 20         | A. He's an investigative reporter with --                |         |
| 21         | Q. And --  |         | 21         | THE WITNESS: Who's he with now?                          |         |
| 22         | A. Yeah.   |         | 22         | UNIDENTIFIED ATTENDEE: WRTV ABC.                         |         |
| 23         | Q. Great. And, for the record, who is she? Is            |         | 23         | A. WR --   |         |
| 24         | that your wife?  |         | 24         | MR. HAAZ: Kristen, I'm going to object to                |         |
| 25         | A. My fiancee. Her name is Shannon.                      |         | 25         | any assistance with his testimony.                       |         |

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| 1          | MS. DENNISON: Yeah.                                      |         | 1          | Q. And when he told you that he was aware of a           |         |
| 2          | MR. HAAZ: Mr. Counceller, I understand you               |         | 2          | thousand instances of similar issues, what -- did you    |         |
| 3          | haven't done this before, but the rules don't allow for  |         | 3          | have an understanding as to what he meant by "similar    |         |
| 4          | you to consult with others or have side conversations so |         | 4          | issues"?   |         |
| 5          | --   |         | 5          | MR. HAAZ: Object to form.                                |         |
| 6          | THE WITNESS: Okay.                                       |         | 6          | BY MS. DENNISON:   |         |
| 7          | MR. HAAZ: You're just going to have to                   |         | 7          | Q. You can answer.                                       |         |
| 8          | testify to the best of your recollection.                |         | 8          | A. I can answer?   |         |
| 9          | MS. DENNISON: Yeah, and it's okay. If you                |         | 9          | Q. Yes, you may answer.                                  |         |
| 10         | don't -- and I'm not sure --                             |         | 10         | A. Just that -- I'm not too sure -- I'm not too          |         |
| 11         | BY MS. DENNISON:   |         | 11         | sure. I know he interviewed a few people that's had      |         |
| 12         | Q. I think I forgot this instruction, Mr.                |         | 12         | similar situations like mine, but I don't know who they  |         |
| 13         | Counceller, so that's on me. But if you don't know the   |         | 13         | were, all this type of thing or anything else. He just   |         |
| 14         | answer to a question, please just tell me that -- that   |         | 14         | did an investigation, and I don't know where he come up  |         |
| 15         | you don't know, and that's fine, okay?                   |         | 15         | with a thousand either.                                  |         |
| 16         | A. Okay.   |         | 16         | Q. Do you have any information as to whether those       |         |
| 17         | Q. Thank you so much. All right. So -- so Rafael         |         | 17         | thousand instances involved Glock pistols or a variety   |         |
| 18         | Sanchez told you that he knew of a thousand instances of |         | 18         | of pistols or something else?                            |         |
| 19         | similar issues; is that what you testified to?           |         | 19         | MR. HAAZ: Object to form.                                |         |
| 20         | MR. HAAZ: Objection.                                     |         | 20         | BY MS. DENNISON:   |         |
| 21         | A. That's what he told me, you know, back then, and      |         | 21         | Q. You can answer.                                       |         |
| 22         | I don't think he contacted with everyone that -- that -- |         | 22         | A. Several were Glocks, and then I think he told me      |         |
| 23         | but he did get ahold of some that have had dis --        |         | 23         | one was a Sig.   |         |
| 24         | accidental discharges.                                   |         | 24         | Q. Okay.   |         |
| 25         | BY MS. DENNISON:   |         | 25         | A. But I don't know the circumstances of it.             |         |
| 2025-05-23 | <b>Counceller, David</b>                                 | Page 19 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 20 |
| 1          | Q. Okay. And you can ignore both of us if we say         |         | 1          | have some questions for you on that, but I want to       |         |
| 2          | objection to form, you can just ignore us and answer the |         | 2          | confirm that this is what you saw; okay, Mr. Counceller? |         |
| 3          | question. I'm sure I might do the same when Mr. Haaz     |         | 3          | THE WITNESS: Sure.                                       |         |
| 4          | asks you some questions. Again, that's just to --        |         | 4          | (Whereupon, a video is being played.)                    |         |
| 5          | that's just for us to deal with later, but you don't     |         | 5          | MR. HAAZ: Kristen? Kristen.                              |         |
| 6          | have to worry about it, okay?                            |         | 6          | (Whereupon, a video is being played.)                    |         |
| 7          | A. Okay.   |         | 7          | VIDEOGRAPHER: Excuse me?                                 |         |
| 8          | Q. Thanks. All right, so -- all right, so I'm going      |         | 8          | MR. HAAZ: Kristen?                                       |         |
| 9          | to go ahead and I'm going to show you what I believe is  |         | 9          | MS. DENNISON: Yes.                                       |         |
| 10         | the Channel 6 news report. So I'm going to go ahead and  |         | 10         | MR. HAAZ: I can't see the video. Can                     |         |
| 11         | -- well, let me ask you first: Did you see the Channel   |         | 11         | anyone else not see it?                                  |         |
| 12         | 6 news report about your incident?                       |         | 12         | MS. DENNISON: Oh, my God.                                |         |
| 13         | A. Yes.  |         | 13         | VIDEOGRAPHER: No.  |         |
| 14         | Q. Okay. I'm going to go ahead and play the video.       |         | 14         | MS. DENNISON: I forgot to share it. How                  |         |
| 15         | MS. DENNISON: I'm going to play the whole                |         | 15         | about I share it.  |         |
| 16         | video, Sam, and I understand that there will be some     |         | 16         | Thank you, Sam. Thank you for interrupting               |         |
| 17         | hearsay played in here that you will have an objection   |         | 17         | before I went any further with that.                     |         |
| 18         | to. You can note that now, or you can note it later,     |         | 18         | Let me share the video. I got ahead of                   |         |
| 19         | okay?  |         | 19         | myself, and we'll start over. I'm going to start from    |         |
| 20         | MR. HAAZ: Yeah, to the extent that the                   |         | 20         | the beginning. My apologies. Can you all see it now?     |         |
| 21         | video will be played or any portion of this video will   |         | 21         | THE WITNESS: Yes.  |         |
| 22         | be played at trial, I mean we'd object to the entire     |         | 22         | (Whereupon, a video is being played.)                    |         |
| 23         | video coming in.   |         | 23         | MS. DENNISON: Okay.                                      |         |
| 24         | MS. DENNISON: Understood. So for now, I'm                |         | 24         | BY MS. DENNISON:   |         |
| 25         | just going to play the Channel 6 news video because I'll |         | 25         | Q. Mr. Counceller, is that the ABC News report that      |         |

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| 2025-05-23 | <b>Counceller, David</b>                                 | Page 21 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 22 |
| 1          | you recall previously seeing?                            |         | 1          | another accidental discharge in 1999?                    |         |
| 2          | A. Yes.  |         | 2          | A. I did, yes.   |         |
| 3          | Q. Okay. And that was reported by Rafael Sanchez,        |         | 3          | Q. What weapon was involved with that accidental         |         |
| 4          | that's what you were referencing a little bit ago; is    |         | 4          | discharge in 1999?                                       |         |
| 5          | that correct?  |         | 5          | A. It was a 380 called a Grendel. It's a -- it's --      |         |
| 6          | A. Yes.  |         | 6          | it's another -- well, that was totally my fault. The     |         |
| 7          | Q. Okay. There were some other individuals               |         | 7          | gun was defective, the retaining pin that would hold up  |         |
| 8          | mentioned in that news report. Did you ever speak with   |         | 8          | the receiver to the lower part of the receiver kept --   |         |
| 9          | any of the other individuals that reported having a      |         | 9          | every time you'd shoot it, it would work its way out.    |         |
| 10         | discharge with a drawstring from their jacket?           |         | 10         | And so my son had it for a while, and he told me it was  |         |
| 11         | A. No.   |         | 11         | defective and what it was doing, and so I said okay. So  |         |
| 12         | Q. Okay. Have you ever spoken with anybody else who      |         | 12         | I put it in a box, and he was -- I was gonna take it, at |         |
| 13         | experienced an accidental discharge that you believed    |         | 13         | the time, to a local gunsmith and have him look at it.   |         |
| 14         | was similar to yours?                                    |         | 14         | Well, it's -- the characteristics of that gun was that   |         |
| 15         | A. No.   |         | 15         | you have to open it up, and you didn't have a magazine   |         |
| 16         | MR. HAAZ: Object to form.                                |         | 16         | that went up through the bottom of the handle. You       |         |
| 17         | BY MS. DENNISON:   |         | 17         | opened it up, and then you fed it down into the handle.  |         |
| 18         | Q. Okay. Have you ever seen any other accidental         |         | 18         | And when you let it go, it automatically would put one   |         |
| 19         | discharges besides yours?                                |         | 19         | up -- put a round up into the barrel, up to what we call |         |
| 20         | A. On a video one time, something similar happened       |         | 20         | the pipe. Well, when my son gave it to me, it was in     |         |
| 21         | on a range with an individual, but I don't remember      |         | 21         | two pieces with the pin. And -- and like I said, I was   |         |
| 22         | anything about where it happened or who it was or        |         | 22         | doing some laundry one night, and I come across that     |         |
| 23         | anything else.   |         | 23         | box, and I looked at that gun. I said, yeah, I need to   |         |
| 24         | Q. There was a reference within the news report to       |         | 24         | take it up to the local gunsmith and get it fixed. So I  |         |
| 25         | another accidental discharge from 1999. Had you had      |         | 25         | see that the handle was separated from the upper         |         |
| 2025-05-23 | <b>Counceller, David</b>                                 | Page 23 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 24 |
| 1          | receiver and -- the slide -- and I put all -- I unloaded |         | 1          | depiction -- in the ABC video that we just played, did   |         |
| 2          | it where the handle is. Because, like I said, you fed    |         | 2          | you see a depiction of your accidental discharge from    |         |
| 3          | it down at the -- in the bottom, you didn't have a       |         | 3          | 2014 with the Glock?                                     |         |
| 4          | magazine. So I flipped all them rounds out of it. I      |         | 4          | MR. HAAZ: Object to form.                                |         |
| 5          | went to put it back together and when I did, I -- if I   |         | 5          | A. Yes. Yes. You're asking me about -- about the         |         |
| 6          | can put my hand up here, I had it here like this, and I  |         | 6          | video?   |         |
| 7          | went to pull it together to put this pin in to hold it   |         | 7          | BY MS. DENNISON:   |         |
| 8          | -- to hold it together to show the gunsmiths how -- what |         | 8          | Q. Yes.  |         |
| 9          | -- what the malfunction was on it. And in my             |         | 9          | A. Yeah.   |         |
| 10         | carelessness of not thinking -- and, like I said, if you |         | 10         | Q. And if I share my screen right now, I have the        |         |
| 11         | lo -- load it and you let it go forward, it              |         | 11         | video freeze framed here. Is this you on the -- on the   |         |
| 12         | automatically -- one goes up into the barrel. I didn't   |         | 12         | right side of the counter with the hat on?               |         |
| 13         | drop that barrel out and see if there was a round up in  |         | 13         | A. Yup, that's me.                                       |         |
| 14         | that barrel. And when I shoved it together like this,    |         | 14         | Q. And this was the gun shop that you were in at the     |         |
| 15         | it -- it went back and hit the firing pin, and           |         | 15         | time?  |         |
| 16         | discharged in my hand. And I don't know if you can see   |         | 16         | A. Yes.  |         |
| 17         | it or not, but it -- it's right here, it's -- that's an  |         | 17         | Q. Okay. And I'm going to go a little bit further        |         |
| 18         | exit wound, and that was -- or, excuse me, that was the  |         | 18         | with it to where the discharge was, and I'm going to     |         |
| 19         | entrance wound, this is the ex -- ex -- exit wound.      |         | 19         | just put it on without sound. So I'm going to share it   |         |
| 20         | And -- and, yeah, that was -- and I knew right after it  |         | 20         | -- my screen again. And on the screen, is this the --    |         |
| 21         | happened, I -- that was carelessness on my part. I       |         | 21         | is this the gun shop that you were in, Wolf's Gun Shop?  |         |
| 22         | should have -- I should have dropped that barrel down    |         | 22         | A. Yes.  |         |
| 23         | because that was the -- that's the way the gun was       |         | 23         | (Whereupon, a video is being played.)                    |         |
| 24         | designed, and it's nobody's fault but my own.            |         | 24         | Q. Okay. This video that's playing right now, do         |         |
| 25         | Q. Okay. And in the video, did you see a                 |         | 25         | you know the video that just played moving up into the   |         |

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| 2025-05-23 | <b>Counceller, David</b>   | Page 25 | 2025-05-23 | <b>Counceller, David</b>   | Page 26 |
|            | <p>1 gun shop, was that video that you had taken or that<br/> 2 somebody else had taken?<br/> 3 A. That was what Ra -- the cameraman from Rafael<br/> 4 Sanchez. His cameraman, I think, shot that.<br/> 5 Q. Okay.<br/> 6 A. If you could notice, I'm in -- I'm in uniform<br/> 7 there.<br/> 8 Q. Okay. And this -- this portion of video where<br/> 9 you're walking into the gun shop, was that a video taken<br/> 10 on the day of the incident or at some other time?<br/> 11 A. No, that was after the fact.<br/> 12 Q. Okay.<br/> 13 A. When he was doing the story.<br/> 14 Q. So I'm going to keep playing right now.<br/> 15 (Whereupon, a video is being played.)<br/> 16 Q. Now, I've just stopped this video at 34 seconds.<br/> 17 Is this video of you on the day of the accident?<br/> 18 A. Yes.<br/> 19 Q. Do you know where this video was taken from?<br/> 20 A. That -- that was a security camera that Mr. Wolf,<br/> 21 the owner of the gun shop, had.<br/> 22 Q. Okay. I'm going to go ahead --<br/> 23 (Whereupon, a video is being played.)<br/> 24 Q. Right here, is he -- are you -- let me strike<br/> 25 that. Right here, what we see on the camera, is there a</p> |         |            | <p>1 firearm that's being exchanged between the two of you?<br/> 2 A. Yes, he was showing me this other gun that I<br/> 3 asked to look at.<br/> 4 Q. Okay. I'm going to keep playing it.<br/> 5 (Whereupon, a video is being played.)<br/> 6 Q. So is this you looking at that other gun?<br/> 7 A. Yes.<br/> 8 Q. All right. And now we have gone to another video<br/> 9 that is not the video of your incident for a little bit.<br/> 10 I'm going to stop it again and start playing it at<br/> 11 47 seconds.<br/> 12 (Whereupon, a video is being played.)<br/> 13 Q. Is that you again in this video?<br/> 14 A. Yes.<br/> 15 Q. And are you looking at that weapon from the store<br/> 16 that you wanted to take a look at?<br/> 17 A. Yes.<br/> 18 Q. Okay. I'm going to hit play.<br/> 19 (Whereupon, a video is being played.)<br/> 20 Q. Now, I just stopped it at 51 seconds. Do you<br/> 21 know what you were doing right there?<br/> 22 A. Yes.<br/> 23 Q. What were you doing?<br/> 24 A. I'm pulling out my weapon to compare it with the<br/> 25 other one.</p> |         |
| 2025-05-23 | <b>Counceller, David</b>   | Page 27 | 2025-05-23 | <b>Counceller, David</b>   | Page 28 |
|            | <p>1 Q. Okay. And then right now, are you putting that<br/> 2 back into your holster?<br/> 3 A. Yes.<br/> 4 Q. And that was the holster that you showed us a<br/> 5 moment ago?<br/> 6 A. Yes.<br/> 7 Q. That was an outside the waistband holster?<br/> 8 A. Yes.<br/> 9 Q. Okay. So you had it clipped on your right hip?<br/> 10 A. Yes.<br/> 11 (Whereupon, a video is being played.)<br/> 12 Q. And then what are you doing right there?<br/> 13 A. I'm -- I got my jacket, and I'm pulling it upward<br/> 14 to put it -- to conceal it.<br/> 15 (Whereupon, a video is being played.)<br/> 16 Q. Okay. And what just happened right there? I've<br/> 17 stopped it at 1 minute and 3 seconds into the video.<br/> 18 What just happened?<br/> 19 A. I felt like when -- when I -- when I put it in my<br/> 20 holster, it didn't go in real smoothly, like I had some<br/> 21 kind of resistance.<br/> 22 Q. Okay. And then what happened?<br/> 23 A. Well, then after I -- I felt like it was in<br/> 24 there, then I went to pull up on my jacket and -- to<br/> 25 conceal it, and it -- and then it discharged as my hand</p>  |         |            | <p>1 was there pulling up on the jacket.<br/> 2 Q. Okay. Now, there were portions of this video in<br/> 3 which there were statements made by you. Do you recall<br/> 4 seeing that?<br/> 5 A. Pardon?<br/> 6 Q. Well, before I get to that, let me ask you, the<br/> 7 portions of the video that I just showed you depicting<br/> 8 your discharge incident, are those true and accurate<br/> 9 representations of what happened when your Glock 23<br/> 10 discharged when you were putting it into your holster in<br/> 11 January of 2014?<br/> 12 MR. HAAZ: Object to form.<br/> 13 BY MS. DENNISON:<br/> 14 Q. You can answer.<br/> 15 A. Yes.<br/> 16 Q. Okay. I'm going to stop sharing for a moment.<br/> 17 Now, you gave an interview as well; is that<br/> 18 correct?<br/> 19 A. (No response.)<br/> 20 Q. To Rafael Sanchez?<br/> 21 A. Yes.<br/> 22 Q. Why did you give an interview to Rafael Sanchez<br/> 23 of this incident?<br/> 24 A. I -- I had a concern like the other officer in<br/> 25 that one video. Of course I didn't see that video until</p>       |         |

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| 2025-05-23 | <b>Counceller, David</b>                                  | Page 29 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 30 |
| 1          | later but -- until this -- this program came out, but I   |         | 1          | trigger guard area, that blade or tab trigger on the     |         |
| 2          | had a concern about if someone gets a -- something stuck  |         | 2          | Glock did not prevent your gun from discharging; is that |         |
| 3          | in their trigger guard, whether it be a drawstring or     |         | 3          | correct?   |         |
| 4          | keys or whatever people might carry and if something can  |         | 4          | A. Yes.  |         |
| 5          | worm their way into a trigger guard and maybe -- they     |         | 5          | MR. HAAZ: Object to form.                                |         |
| 6          | might be in Walmart or someplace bending over to pick up  |         | 6          | BY MS. DENNISON:   |         |
| 7          | a can of oil off the bottom shelf or something and they   |         | 7          | Q. I've got to ask that again because you said "yes"     |         |
| 8          | move or something. And then if something like that        |         | 8          | over his "object to form." So I'm just going to ask you  |         |
| 9          | happened, if something was in there and it discharged     |         | 9          | one more time, if you could just pause and let Mr. Haaz  |         |
| 10         | and the barrel was pointing backwards or something when   |         | 10         | do his object to form, and then do your answer.          |         |
| 11         | -- when you're bent over or something like that, just an  |         | 11         | MR. HAAZ: I'll tell you what. I'll just                  |         |
| 12         | awareness thing to let people know that certain guns,     |         | 12         | note my objection now, and you can ask him.              |         |
| 13         | the way they're designed and everything, they can be      |         | 13         | MS. DENNISON: Thanks, Sam.                               |         |
| 14         | dangerous. And -- and Glocks -- and I -- and I -- I       |         | 14         | BY MS. DENNISON:   |         |
| 15         | like Glock, they're good shooters and everything else,    |         | 15         | Q. Okay. So during this discharge incident that we       |         |
| 16         | but there's something you need to know about them, and    |         | 16         | just saw, that tabbed trigger on the Glock pistol did    |         |
| 17         | they're -- they're -- they're (sic) got a dangerous       |         | 17         | not prevent a foreign object from discharging your       |         |
| 18         | trigger guard there -- excuse me, a trigger that -- that  |         | 18         | pistol when your finger wasn't on the trigger; is that   |         |
| 19         | that activation switch, slash, safety is there, and if    |         | 19         | correct?   |         |
| 20         | it gets pushed down somehow with not your finger but      |         | 20         | A. Yes.  |         |
| 21         | with anything else and it gets flush, then you could      |         | 21         | Q. Now, you were chief of police at the time of this     |         |
| 22         | accidentally have it discharge, and it was my concern for |         | 22         | incident. How long had you been in law enforcement?      |         |
| 23         | the public.   |         | 23         | A. I come on in June of 1980.                            |         |
| 24         | Q. So in your instance as you were holstering that        |         | 24         | Q. So in 2014, you were -- in January of 2014, you       |         |
| 25         | gun and an object other than your finger got into that    |         | 25         | were approaching 34 years of service with law            |         |
| 2025-05-23 | <b>Counceller, David</b>                                  | Page 31 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 32 |
| 1          | enforcement?  |         | 1          | A. (Complying.)  |         |
| 2          | A. Yes.   |         | 2          | Q. Thanks very much. And so there are three              |         |
| 3          | Q. Were you with Connersville Police Department that      |         | 3          | numbers. It looks to me like, and you'll correct me if   |         |
| 4          | entire 34 years?  |         | 4          | I'm wrong, that that holster indicates it's designed for |         |
| 5          | A. Yes. I spent four years in the military police         |         | 5          | three Glock models, there are three numbers after Glock, |         |
| 6          | back in the 70s.  |         | 6          | right?   |         |
| 7          | Q. Four years?  |         | 7          | A. Yes.  |         |
| 8          | A. Yes.   |         | 8          | MS. DENNISON: Objection to form.                         |         |
| 9          | Q. What branch?   |         | 9          | BY MR. HAAZ:   |         |
| 10         | A. United States Army.                                    |         | 10         | Q. Okay. And what are the numbers?                       |         |
| 11         | Q. Thank you for your service.                            |         | 11         | A. Well, technically that is the same -- same frame      |         |
| 12         | What had you carried in your four years in                |         | 12         | as -- a lot of the Glocks are the same. The calibers     |         |
| 13         | military police?  |         | 13         | wouldn't be --   |         |
| 14         | A. A 1911 .45, and they were -- they were purc --         |         | 14         | Q. Sir, I'm just asking what are the three numbers       |         |
| 15         | they were Colts and Ithacas and Remingtons. The           |         | 15         | that are written on the holster.                         |         |
| 16         | government -- all the 1911s were all -- all the same      |         | 16         | A. Well, I'm having a little trouble looking at them     |         |
| 17         | everything except they had several manufacturers that     |         | 17         | so just give me -- bear with me because I --             |         |
| 18         | made them, but they were all interchangeable in parts.    |         | 18         | Q. Take your time.                                       |         |
| 19         | MS. DENNISON: All right. Those are all the                |         | 19         | A. I -- I can't make 'em out, sir. I'm looking at        |         |
| 20         | questions I have for you, sir. Mr. Haaz will have some    |         | 20         | them with a magnifying glass -- what's -- what's -- I'm  |         |
| 21         | questions for you as well, so I'll turn it over to him.   |         | 21         | -- somebody else has got better eyesight than I got.     |         |
| 22         | EXAMINATION   |         | 22         | Okay, 7 -- 77, 22 and a 31. That must be the model       |         |
| 23         | BY MR. HAAZ:  |         | 23         | numbers. I'm familiar with the 22.                       |         |
| 24         | Q. Mr. Counceller, could you hold up that holster         |         | 24         | Q. Okay. So just so I understand, it's -- that           |         |
| 25         | again so I could see the -- the indent on the leather?    |         | 25         | holster says Glock, and then the numbers are 77 and then |         |

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| 2025-05-23 | <b>Counceller, David</b>                                 | Page 33 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 34 |
| 1          | --   |         | 1          | 1999.  |         |
| 2          | A. It's correction to 17 --                              |         | 2          | Q. And you're still with Connersville Police             |         |
| 3          | Q. Okay, so --   |         | 3          | Department?  |         |
| 4          | A. -- 22 and 31.   |         | 4          | A. No, sir. I've been retired for 10 years.              |         |
| 5          | Q. All right. So --                                      |         | 5          | Q. Congratulations. So from '99 until about 2014,        |         |
| 6          | A. The 17 is a 9 millimeter, but it's the same           |         | 6          | were you aware of any other unintended discharges with   |         |
| 7          | frame. And also, just to clear it here, the 22 is -- is  |         | 7          | Glocks from trigger contact by a foreign object like     |         |
| 8          | the longer version of the 23. The 17 is a -- is --       |         | 8          | yours?   |         |
| 9          | these are like for 9 millimeters and 40s. So the 22 and  |         | 9          | A. No.   |         |
| 10         | 23 is -- the .40 caliber difference there, they're .40   |         | 10         | Q. Prior to 1999, what did Connersville PD carry?        |         |
| 11         | cal. Then the 9 millimeter is 17 and a 19. And so        |         | 11         | A. Berettas, 92FS.                                       |         |
| 12         | they're the same frame and all this. There's -- also     |         | 12         | Q. And am I correct that the Beretta 92 had a manual     |         |
| 13         | another number is 31, and 31 I don't know -- it -- it's  |         | 13         | safety?  |         |
| 14         | the same frame, but it could be a different length of    |         | 14         | MS. DENNISON: Objection to form. You can                 |         |
| 15         | the barrel or whatever. I don't -- I'm not sure.         |         | 15         | answer.  |         |
| 16         | Q. Sure, okay. And so just so I understand, the          |         | 16         | BY MR. HAAZ:   |         |
| 17         | numbers that are stamped on the holster you were using   |         | 17         | Q. Let me rephrase the question because there's an       |         |
| 18         | that day under the word "Glock" are 17, 22 and 31?       |         | 18         | objection.   |         |
| 19         | A. Yes.  |         | 19         | What safeties did the Beretta 92 have, if any?           |         |
| 20         | Q. And on the date of the incident, you were not         |         | 20         | A. They had like five different safety features.         |         |
| 21         | carrying a Glock 17, a Glock 22 or a Glock 31?           |         | 21         | They had a -- a lock that would -- would disconnect the  |         |
| 22         | A. No.   |         | 22         | trigger totally, and then you could flip the -- flip the |         |
| 23         | Q. How long has Connersville PD carried Glock            |         | 23         | back lever and it would -- it would go back into a fire  |         |
| 24         | pistols for?   |         | 24         | position. You could carry it unloaded -- of course if    |         |
| 25         | A. They started carrying them, I think, about '99,       |         | 25         | it's loaded, it could -- have it that way, or you can    |         |
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| 1          | have the hammer down -- it's a double action, a total    |         | 1          | engaged, do you believe your unintended discharge would  |         |
| 2          | different feature. And they say safety features, just    |         | 2          | have happened?   |         |
| 3          | like the 1911 in the Army back in the day, they talk     |         | 3          | A. No.   |         |
| 4          | about, you know, being -- being open, cocked open,       |         | 4          | MS. DENNISON: Object to form.                            |         |
| 5          | that's a safety feature. Down with nothing in it is a    |         | 5          | BY MR. HAAZ:   |         |
| 6          | safety feature. For instance -- hold on just a second.   |         | 6          | Q. Would it have been safer if your Glock pistol had     |         |
| 7          | They're -- they're just a lot safer gun, and so was the  |         | 7          | an external manual safety?                               |         |
| 8          | .45. They didn't have the little -- little dog ear or    |         | 8          | A. Possibly.   |         |
| 9          | the little trigger in the trigger, so to speak.          |         | 9          | Q. If it were engaged?                                   |         |
| 10         | Q. And why is it your opinion that the Beretta was a     |         | 10         | A. Yes.  |         |
| 11         | safer gun than the Glock?                                |         | 11         | Q. I want to talk briefly about the -- the incident      |         |
| 12         | A. Because of the safety features it had.                |         | 12         | itself. At the -- on the date of the incident, this was  |         |
| 13         | Q. Okay. And did the Glock have fewer safety             |         | 13         | January 18th of 2014, were you still working at          |         |
| 14         | futures than the Beretta?                                |         | 14         | Connersville Police Department or were you retired?      |         |
| 15         | A. Yes.  |         | 15         | A. What -- could you give that date again?               |         |
| 16         | Q. And is that because the Glock did not have a          |         | 16         | Q. Sure. It looks like from the security camera,         |         |
| 17         | manual safety that would prevent the trigger from        |         | 17         | the date of this incident was January 18th of 2014.      |         |
| 18         | pulling?   |         | 18         | A. Okay.   |         |
| 19         | MS. DENNISON: Objection to form.                         |         | 19         | Q. On that day, were you still employed with the         |         |
| 20         | A. True, that -- that's -- that's -- yeah, it --         |         | 20         | Connersville Police Department?                          |         |
| 21         | they're tot -- two different guns, totally, with the --  |         | 21         | A. Yes, I was the police chief.                          |         |
| 22         | the whole thing is totally different.                    |         | 22         | Q. And how long after that did you retire?               |         |
| 23         | BY MR. HAAZ:   |         | 23         | A. I retired in the end of 2015.                         |         |
| 24         | Q. All right. And if you had had a pistol on the         |         | 24         | Q. Okay. So were you on duty at the time of this         |         |
| 25         | date of the incident that had a manual safety and it was |         | 25         | incident?  |         |

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| 1 A. No.  |                          |         | 1 your leather holster relates to what are the approved     |                          |         |
| 2 Q. All right. Were you carrying your duty weapon?         |                          |         | 2 Glock models for that holster?                            |                          |         |
| 3 A. Yes.   |                          |         | 3 MS. DENNISON: Objection to form.                          |                          |         |
| 4 Q. And was the holster you were using that day your       |                          |         | 4 A. Yes.   |                          |         |
| 5 duty holster or personal holster?                         |                          |         | 5 BY MR. HAAZ:  |                          |         |
| 6 A. Personal holster.                                      |                          |         | 6 Q. Did you see anything on the holster that, in any       |                          |         |
| 7 Q. All right, so that wasn't issued by the                |                          |         | 7 way, suggested that Glock had manufactured that holster?  |                          |         |
| 8 Connerversville Police Department?                        |                          |         | 8 A. No, I doubt it.  |                          |         |
| 9 A. No.  |                          |         | 9 MS. DENNISON: Objection. Sorry, we're sort                |                          |         |
| 10 Q. Where did you buy it?                                 |                          |         | 10 of speaking over each other, my apologies. I'm going to  |                          |         |
| 11 A. Honestly, I think I bought it at -- at a place        |                          |         | 11 try to get my objections in faster. If you could just    |                          |         |
| 12 called Jenkins. It's a -- in Indianapolis. It's a        |                          |         | 12 take like a quick breath before you begin your answer,   |                          |         |
| 13 police supply store, and it was a used -- they used to   |                          |         | 13 we can get a clean record, Mr. Counceller. I don't want  |                          |         |
| 14 have a big table of used leather or camo pouches or      |                          |         | 14 to step over you.  |                          |         |
| 15 handcuff pouches. Just whole -- a lot of -- a lot of     |                          |         | 15 BY MR. HAAZ:   |                          |         |
| 16 leather and some -- some plastic stuff that -- I think I |                          |         | 16 Q. You indicated that when -- and I can pull up part     |                          |         |
| 17 bought it up there at -- a one-time use.                 |                          |         | 17 of the video, and I'll share my screen so we can go      |                          |         |
| 18 Q. All right. So fair to say that the holster you        |                          |         | 18 through it.  |                          |         |
| 19 were using on the date of the incident was not purchased |                          |         | 19 All right. So I'm at about -- if I look at my            |                          |         |
| 20 from Glock or anything associated with a Glock store or  |                          |         | 20 notes, I think the security camera video starts at about |                          |         |
| 21 --   |                          |         | 21 51 seconds so I'm going to start there and play a little |                          |         |
| 22 A. No, no.   |                          |         | 22 bit.   |                          |         |
| 23 MS. DENNISON: Objection to form.                         |                          |         | 23 (Whereupon, a video is being played.)                    |                          |         |
| 24 BY MR. HAAZ:   |                          |         | 24 Q. All right. So at about 54 seconds, you've taken       |                          |         |
| 25 Q. And is it your understanding that the stamping on     |                          |         | 25 out your Glock 23, and it's in your right hand; would    |                          |         |
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| 1 you agree?  |                          |         | 1 a drawstring in there with it.                            |                          |         |
| 2 A. Yes.   |                          |         | 2 Q. All right. So is it -- is it your belief and           |                          |         |
| 3 Q. All right. And then about 56 seconds, you              |                          |         | 3 understanding that when you re-holstered your Glock 23    |                          |         |
| 4 re-holstered your Glock 23, right?                        |                          |         | 4 around the 54 second mark there, that the drawstring was  |                          |         |
| 5 A. Yes.   |                          |         | 5 through your trigger guard at that point?                 |                          |         |
| 6 Q. And you previously testified that when you             |                          |         | 6 A. I would -- probably. That was my resistance,           |                          |         |
| 7 re-holstered it, you felt resistance?                     |                          |         | 7 probably.   |                          |         |
| 8 A. Yes.   |                          |         | 8 Q. Okay. And so you believe that when you                 |                          |         |
| 9 Q. What do you mean?                                      |                          |         | 9 re-holstered your gun there in the video, that the        |                          |         |
| 10 A. It just didn't -- I didn't know if I had my           |                          |         | 10 drawstring went through, and that would have been the    |                          |         |
| 11 jacket -- you know, that there was -- sliding down on    |                          |         | 11 resistance that you felt?                                |                          |         |
| 12 the side. It just -- it wasn't -- just moving in there   |                          |         | 12 A. That's what I felt like, yeah.                        |                          |         |
| 13 real slow and so I just -- then it -- then it went, it   |                          |         | 13 MS. DENNISON: Objection to form.                         |                          |         |
| 14 went in. And so that's when I -- you know, after that,   |                          |         | 14 A. That's -- after I pulled it out and then looked       |                          |         |
| 15 I went to pull my jacket up and put it underneath my     |                          |         | 15 at it and kind of compared the size of this other one I  |                          |         |
| 16 jacket again, and that's when it discharged.             |                          |         | 16 was looking at, then I went -- holstered it back. It     |                          |         |
| 17 Q. When you felt that resistance, it doesn't appear      |                          |         | 17 was a little rough. And I remember -- just like I said,  |                          |         |
| 18 on the video that you kind of did a check to see what    |                          |         | 18 I was back on my side here and I -- you know, sliding in |                          |         |
| 19 that resistance might be; is that -- is that correct?    |                          |         | 19 and then it -- then it just went in place. And so --     |                          |         |
| 20 A. Well, I thought I did. You might have to run it       |                          |         | 20 then I got my jacket to pull it over the sides, and      |                          |         |
| 21 -- I'm not too sure, but I -- I didn't -- I don't -- you |                          |         | 21 that's when it discharged.                               |                          |         |
| 22 know, I'm just -- what I'm seeing on the video and what  |                          |         | 22 BY MR. HAAZ:   |                          |         |
| 23 I'm recalling is I -- I -- I didn't really like turn     |                          |         | 23 Q. All right. I'm gonna play another part of the         |                          |         |
| 24 around and look, but I can just feel that where -- where |                          |         | 24 video. It's loading up here. Just give me a sec. All     |                          |         |
| 25 it went in finally, and I didn't have no idea there was  |                          |         | 25 right. I'm going to play the video, and then I'm going   |                          |         |

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| 1          | to ask you some questions about it. And I'm starting at       |         | 1          | <b>Q. All right. And how does it work?</b>                    |         |
| 2          | 1:50.   |         | 2          | <b>A. The way it worked?</b>                                  |         |
| 3          | (Whereupon, a video is being played.)                         |         | 3          | <b>Q. Yeah.</b>   |         |
| 4          | Q. All right. I am now pausing it at about 2:06.              |         | 4          | <b>A. Well, it's, like I said, if you got this -- I got</b>   |         |
| 5          | MS. DENNISON: Objection to hearsay in the                     |         | 5          | <b>another -- I got another Glock right here, I can show</b>  |         |
| 6          | video.  |         | 6          | <b>you.</b>   |         |
| 7          | MR. HAAZ: Well, we'll talk about that.                        |         | 7          | <b>Q. Sure.</b>   |         |
| 8          | BY MR. HAAZ:  |         | 8          | <b>A. This is it, this is the same model. I -- I still</b>    |         |
| 9          | Q. Who was speaking in the segment of the video I             |         | 9          | <b>own the other one, but it's locked up right at the</b>     |         |
| 10         | just played?  |         | 10         | <b>moment. But as you see (indicating) -- okay, I don't</b>   |         |
| 11         | MS. DENNISON: Objection to form. You can                      |         | 11         | <b>know if I can -- do you see that little -- I call it a</b> |         |
| 12         | answer.   |         | 12         | <b>dog ear, right here (indicating).</b>                      |         |
| 13         | A. Are you talking -- are you talking about who was           |         | 13         | <b>Q. Yup.</b>  |         |
| 14         | speaking?   |         | 14         | <b>A. Okay? And now, like I said on that video -- let</b>     |         |
| 15         | BY MR. HAAZ:  |         | 15         | <b>me get this so I can see 'em here. I'm squeezing down</b>  |         |
| 16         | Q. Yeah, and I'll go back. I think it started at              |         | 16         | <b>right here on this side. It's -- it's not -- it's not</b>  |         |
| 17         | about 1:52. There's a little demonstration here.              |         | 17         | <b>going to go off, you know, with -- like I'm pulling</b>    |         |
| 18         | A. Yeah, that was me.   |         | 18         | <b>right now, until something or your finger or something</b> |         |
| 19         | (Whereupon, a video is being played.)                         |         | 19         | <b>gets in there and then (indicating) --</b>                 |         |
| 20         | Q. And that's the section of the video I was talking          |         | 20         | <b>Q. Understood. And so you said -- is it your</b>           |         |
| 21         | about. Who is speaking?                                       |         | 21         | <b>understanding that the drawstring would have gotten</b>    |         |
| 22         | A. Me.  |         | 22         | <b>through your trigger guard and also pulled the dog ear</b> |         |
| 23         | <b>Q. All right. And was that you giving a</b>                |         | 23         | <b>in the middle of your trigger?</b>                         |         |
| 24         | <b>demonstration about how the dog ear or the tab works?</b>  |         | 24         | <b>A. If -- when I pulled my jacket up is when it</b>         |         |
| 25         | <b>A. Yes.</b>  |         | 25         | <b>discharged.</b>  |         |
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| 1          | Q. All right.   |         | 1          | answer.   |         |
| 2          | A. And if you see on the -- on the video, I went              |         | 2          | A. I -- I think it's -- I think it's dangerous to be          |         |
| 3          | away from my hand, and I'm grabbing my jacket to pull it      |         | 3          | -- because there's not much of a safety feature there.        |         |
| 4          | up and over, and that's when it discharged. My hand           |         | 4          | I mean, you know, accidents happen, and -- and -- that's      |         |
| 5          | wasn't down there in the trigger guard, it was -- it was      |         | 5          | just -- I just -- that's my personal opinion. And it's        |         |
| 6          | on the jacket.  |         | 6          | just not -- it's just not from what happened. When I          |         |
| 7          | Q. Right. Now, you believe that the Glock is less             |         | 7          | first saw a Glock back in the 80s, I didn't care for          |         |
| 8          | safe, because it doesn't have a manual safety and only        |         | 8          | that -- that type of a setup. But, you know, when we --       |         |
| 9          | has the dog ear safety, than a 1911 or the Beretta that       |         | 9          | the law departments were going to the Sigs and the .40        |         |
| 10         | you previously had; is that right?                            |         | 10         | calibers. And -- and so, you know, when you're in Rome,       |         |
| 11         | A. Yes.   |         | 11         | you do as Romans, so I had to choose my weapon so --          |         |
| 12         | Q. All right. But that dog ear safety isn't a                 |         | 12         | but, you know, they're a good shooting gun. And I -- I        |         |
| 13         | safety on the outside of the gun, right?                      |         | 13         | mean they're durable and you can throw them in the mud        |         |
| 14         | MS. DENNISON: Objection to form.                              |         | 14         | and pick them up and start shooting them. I mean              |         |
| 15         | A. Yes.   |         | 15         | it's -- they're a real durable, good gun, but they can        |         |
| 16         | BY MR. HAAZ:  |         | 16         | be dangerous, just like any other gun. And you got --         |         |
| 17         | <b>Q. All right. And if there is lateral pressure</b>         |         | 17         | and me -- me being a -- yeah, this is my second time          |         |
| 18         | <b>applied to the sides of the trigger that doesn't touch</b> |         | 18         | around, in a sense, and I was always self-conscious           |         |
| 19         | <b>that dog ear safety --</b>                                 |         | 19         | about weapons, you know? I've been around weapons all         |         |
| 20         | <b>A. No.</b>   |         | 20         | my life, and in the service and everything else, and --       |         |
| 21         | <b>Q. -- the trigger will not fire, will it?</b>              |         | 21         | and I've been to a lot of farm schools and sniper school      |         |
| 22         | <b>A. No.</b>   |         | 22         | and everything else. And then -- then something like          |         |
| 23         | Q. All right. So is that dog ear safety better than           |         | 23         | this happens and it -- it does make you feel like a fool      |         |
| 24         | having no dog ear safety at all on that trigger?              |         | 24         | because you let your guard down, you're not paying            |         |
| 25         | MS. DENNISON: Objection to form. You can                      |         | 25         | attention. In this situation, obviously, yeah, it's an        |         |

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| 1          | accident and -- and -- but that's what caught me off<br>2 guard, you know? My first little incident, you know, I<br>3 knew that -- what ha -- what happened. I screwed up,<br>4 and I shouldn't have -- I should have made sure that --<br>5 was no bullet in the barrel. But on this one here, it<br>6 just -- it just like -- and I found out the other police<br>7 officers and -- and -- had similar situations like this,<br>8 and it is embarrassing. And it's -- and, yeah, I don't<br>9 like the design of it, but you know what you're<br>10 carrying. And since that time, even when I was on the<br>11 police department, I wouldn't even carry one up the pipe<br>12 until I was on -- if I was on duty, it would be one<br>13 thing. And, of course, my duty leather was a lot more<br>14 -- it had like three or four different safety features<br>15 on the -- on the holster itself verse -- not just<br>16 talking about the gun, but for carrying and then drawing<br>17 and everything. But -- but this is something that, when<br>18 I was -- even today, if I'm carrying an automatic, I<br>19 won't keep one up the pipe. And -- and if -- and then<br>20 other officers will argue and think, well, you're losing<br>21 seconds there. Well, you're losing -- might lose a<br>22 couple seconds to jack one in the pipe, but at the same<br>23 time, you're thinking about what you're doing too. And<br>24 so when I carry an automatic anymore (sic) -- I don't<br>25 carry one up the pipe until I feel like I need it, and |         | 1          | then I'll jack one in there.<br>2 BY MR. HAAZ:<br>3 Q. Were you required to carry a loaded pistol when<br>4 you were on duty as a police officer?<br>5 A. Yes.<br>6 Q. All right. You previously testified that one of<br>7 the reasons you went to the news and were interviewed is<br>8 essentially you wanted to alert others and make sure<br>9 this didn't happen to others; is that fair?<br>10 A. Yes, and that's -- that's just not police<br>11 officers. Anybody -- we got a lot of -- it's getting<br>12 more so than it was back in the day, but a lot of people<br>13 are carrying their weapons, you know, for personal<br>14 safety. And I just wanted to get out there and -- and<br>15 let people know that what you're carrying, you've gotta<br>16 be familiar with. Don't just, I bought a gun and never<br>17 shot it and never got any special training for it, and<br>18 knew about the weapons you were carrying and the safety<br>19 features and this type of thing. So it's an awareness<br>20 thing is what I was trying to -- trying to go with.<br>21 And, you know, I wasn't looking for no sympathy for me,<br>22 you know, for what happened to me. It just -- it's just<br>23 a deal where I wanted to make the public aware. If<br>24 you're carrying a weapon, you need to know that weapon,<br>25 and you need to have some training and be conscious of |         |
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| 1          | where it is and if it's loaded and so be it, you know?<br>2 Q. Understood. And part of the reason you went on,<br>3 you said, was to essentially warn others that keys or<br>4 other items could actuate their trigger if their gun is<br>5 holstered, right?<br>6 A. Did you say -- I'm -- keys?<br>7 Q. Yeah. I thought you said keys or other items<br>8 could actuate a trigger when the gun is holstered.<br>9 A. Are you talking about car keys or something?<br>10 Q. Yeah.<br>11 A. Yeah. I had an officer -- one of my officers<br>12 stopped in the office a while -- a while back. I mean<br>13 shortly after this happened and this came about and<br>14 everything else, and he had -- he had his keys down<br>15 there by his holster, his house keys and his car keys or<br>16 whatever. And one of the keys somehow had got into his<br>17 holster, in the trigger guard area, and he caught it and<br>18 -- and --<br>19 Q. What do you mean, "he caught it"?  |         | 1          | keys anymore on that side of his holster. A lot of<br>2 times you used to have these key holders on the side of<br>3 your holster -- or belt, I should say.<br>4 Q. And so that anecdote you were just telling us,<br>5 there was no unintended discharge?<br>6 A. No, no, there wasn't, but he -- this officer told<br>7 me that it scared him.<br>8 Q. All right. And what kind of gun was he carrying,<br>9 if you remember?<br>10 A. He was -- I think he was carrying a model 22.<br>11 Same thing but 23 is just a little shorter.<br>12 Q. A Glock?<br>13 A. Pardon?<br>14 Q. Is that a Glock?<br>15 A. Yeah.<br>16 Q. And so in the example you just said, and in the<br>17 demonstration you gave before, if a key had contacted<br>18 the trigger and not actuated the dog ear, just like you<br>19 showed us, the Glock trigger would not pull --<br>20 A. Uh-huh.<br>21 Q. -- rearward and fire; is that right?<br>22 MS. DENNISON: Objection to form.<br>23 (Whereupon, the court reporter asked for<br>clarification.)<br>25 BY MR. HAAZ:   |         |

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| 1          | Q. Would not pull rearward and fire?                     |         | 1          | carried in the Army, it's -- it's not a double action.   |         |
| 2          | A. No. She put -- that -- that little dog ear has        |         | 2          | You gotta have one up the -- you have to jack and then   |         |
| 3          | got to come down flush with that -- that trigger.        |         | 3          | -- and have the trigger back or whatever. Every gun's    |         |
| 4          | Q. Okay.   |         | 4          | got a little different char -- characteristics. Now, at  |         |
| 5          | MR. HAAZ: I don't have any other questions.              |         | 5          | -- since the -- this time or before, a lot of gun        |         |
| 6          | Thank you very much, Mr. Counceller.                     |         | 6          | manufacturers -- you know, and I've -- we never carried  |         |
| 7          | THE WITNESS: Okay.                                       |         | 7          | any Sigs, but I owned several Sigs, and they were a      |         |
| 8          | RE-EXAMINATION   |         | 8          | pretty safe gun. And the Sig I owned -- or the two I     |         |
| 9          | BY MS. DENNISON:   |         | 9          | owned, it never had any type of dog ear type of trigger. |         |
| 10         | Q. I have just a couple of brief follow-ups, Mr.         |         | 10         | They were -- they were similar to the Beretta and the    |         |
| 11         | Counceller, if you could just bear with me for just a    |         | 11         | safety features and everything else and the 1911. So --  |         |
| 12         | moment.  |         | 12         | but a lot of manufacturers today are using them dog ears |         |
| 13         | I believe you indicated earlier that you wanted          |         | 13         | on different new model guns and everything else.         |         |
| 14         | to make the public aware that you need to know what      |         | 14         | Ironically, I purchased a weapon not too long ago, and   |         |
| 15         | you're carrying. Do you recall that?                     |         | 15         | one thing I noticed about it, it had -- it had a little  |         |
| 16         | A. Yes.  |         | 16         | dog ear on it, but also it had a palm safe (sic). So     |         |
| 17         | Q. And what did you mean by that?                        |         | 17         | that's when you -- for instance they have -- back here   |         |
| 18         | A. Well, like I said, a lot of people go buy a gun,      |         | 18         | on a lot of -- like the 1911, for instance, they -- the  |         |
| 19         | and they think that they just point it and shoot it,     |         | 19         | purchase (sic) -- the gun I purchased has a -- a little  |         |
| 20         | pull the trigger, you know? They don't know any          |         | 20         | thing that you gotta -- when you come down here and put  |         |
| 21         | characteristics -- characteristics about their gun, and  |         | 21         | your palm down here like this, it's -- it will push      |         |
| 22         | they need to be trained with it and know the -- the --   |         | 22         | down, and that's a safety feature. So you had the        |         |
| 23         | everything about it. And -- and, you know, like I said,  |         | 23         | safety feature or the activation safety fea -- feature   |         |
| 24         | like we were talking about the Beretta. The Beretta is   |         | 24         | here, with the same type of a dog ear here. But also it  |         |
| 25         | double action. But you take the .45 automatic that I     |         | 25         | won't pull -- it won't pull. And ironically -- and I     |         |
| 2025-05-23 | <b>Counceller, David</b>                                 | Page 51 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 52 |
| 1          | dry fired them all. I would dry fire it just to make     |         | 1          | Do you agree that a gun is designed to discharge         |         |
| 2          | sure, but I did that, and checked that, that was fine,   |         | 2          | when the trigger is pulled?                              |         |
| 3          | up here on this, and I checked this without putting that |         | 3          | MR. HAAZ: Object to form.                                |         |
| 4          | here, and it wouldn't fire (indicating). So they copied  |         | 4          | A. Do I think a gun should discharge when you pull       |         |
| 5          | that off of Colt, and it's -- it's the one that comes up |         | 5          | the trigger?   |         |
| 6          | like this. And when you go like that down, there's two   |         | 6          | BY MS. DENNISON:   |         |
| 7          | -- that's two safety features, and I was kind of         |         | 7          | Q. Yes.  |         |
| 8          | impressed with that. So, you know -- and I don't know    |         | 8          | A. Yes.  |         |
| 9          | if -- what Sig makes today or anything else. The ones I  |         | 9          | Q. Okay. And in your time in law enforcement, would      |         |
| 10         | had, they're -- they were out, you know, 20 years ago or |         | 10         | it be a problem for you if you needed to pull the        |         |
| 11         | -- or before. And so -- but a lot of manufacturers,      |         | 11         | trigger, and the gun did not fire?                       |         |
| 12         | they -- they make them. But -- you know, with the dog    |         | 12         | A. Yeah, definitely.                                     |         |
| 13         | ear now. And -- KelTec and some others. And -- and       |         | 13         | Q. Do you have an expectation that if the trigger is     |         |
| 14         | it's just -- like -- like people need to know where the  |         | 14         | pulled on one of your guns, that the gun will discharge? |         |
| 15         | safety is on them, how to shoot them, when to shoot and  |         | 15         | A. As long as there's one up the -- one up the pipe,     |         |
| 16         | all this kind of stuff but it's -- and it's just a whole |         | 16         | yeah.  |         |
| 17         | -- things to learn about a gun. Just -- you don't go,    |         | 17         | Q. And that was a good clarification. Do you have        |         |
| 18         | just purchase it and throw it in your purse or throw it  |         | 18         | an expectation that if there is a round in the chamber   |         |
| 19         | in your pants or a holster and -- well, I don't know how |         | 19         | of a gun and the trigger is pulled, that it will         |         |
| 20         | to shoot it, but I got one. So I'm just trying to make   |         | 20         | discharge?   |         |
| 21         | a point here, it's people really need to know if they're |         | 21         | MR. HAAZ: Object to form.                                |         |
| 22         | gonna have something like that, they need to get         |         | 22         | A. If it doesn't -- sorry. If it doesn't fire, then      |         |
| 23         | educated with it.  |         | 23         | there's something wrong with the weapon.                 |         |
| 24         | Q. Thank you, sir. I just have a couple more             |         | 24         | BY MS. DENNISON:   |         |
| 25         | questions.   |         | 25         | Q. And that would be a problem, right?                   |         |

|            |  |         |            |   |         |
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| 2025-05-23 | <b>Counceller, David</b>   | Page 53 | 2025-05-23 | <b>Counceller, David</b>  | Page 54 |
| 1          | A. Yeah. Another thing I haven't mentioned, and<br>2 it's something to think about too, is because Glock and<br>3 others, they don't have -- they don't have back here a<br>4 hammer, and a lot of -- and just like I talked about the<br>5 .45 in the Army and the Beretta, they have hammers, so<br>6 you see where the hammer is. This -- these -- these<br>7 hammers -- there's no hammer back here, it's all<br>8 internal. So you really don't know if the thing has got<br>9 one on the trigger or one ready to fire if you don't<br>10 have one up the pipe or whatever, but you know -- don't<br>11 know where that -- that hammer is, you know? There's a<br>12 -- a little pin on some of them that you could see it,<br>13 it's a little more flush, you know, in the back, but<br>14 there's just so many different ways and so many guns out<br>15 here that they have hammers that are exposed and some<br>16 don't. And so it's -- yeah, you're -- you're -- you got<br>17 a -- excuse me. If you are carrying a weapon, then you<br>18 need to know what you're carrying and everything. And<br>19 you pull the trigger because your life's in danger and<br>20 everything else, your expectation is that gun's gonna<br>21 discharge and fire and supposedly hit who you're<br>22 shooting.  |         | 1          | A. Go ahead.<br>2 Q. Did you ever do any training of any officers on<br>3 shooting?<br>4 A. Yes.<br>5 Q. And did you train any of the officers about how<br>6 to properly place their finger on the trigger of a Glock<br>7 to ensure that they push in that -- what you call the<br>8 dog ear or the tab trigger?<br>9 A. Well, yeah. Usually if -- if you're in the<br>10 training mode -- today, okay, they try to keep your<br>11 finger off the trigger as you're seeing right here. So<br>12 if there -- if that finger's coming down, it can come<br>13 down like this (indicating). So usually when they go<br>14 in, they usually try to keep their -- their fingers up<br>15 -- upward, you know, like this, instead of going in like<br>16 this. And, all of a sudden, you trip on an old carpet<br>17 or something, and, you know, it -- you just got -- you<br>18 keep the -- keep the finger off the trigger if you're<br>19 like searching a building or something like this, you<br>20 know? And -- but you can see that you can move it real<br>21 quick in -- inward. Yeah, it's -- it's just like I<br>22 said, it's a lot to learn, and just a lot to remember.<br>23 And you do, you gotta be subconsciously, you know,<br>24 thinking about it, what you're carrying, especially if<br>25 you're in a situation. And I have been fortunately -- |         |
| 2025-05-23 | <b>Counceller, David</b>   | Page 55 | 2025-05-23 | <b>Counceller, David</b>  | Page 56 |
| 1          | was involved in a police shooting back in 2001. And --<br>2 but it wasn't with a hand -- it wasn't with a handgun, I<br>3 was using a shotgun. But, ah -- but -- it -- it's<br>4 something that you -- it comes with your training and --<br>5 and -- and your training with police officers, they<br>6 shoot so many times a year, and just get familiar with<br>7 what you got and everything else. Just --<br>8 Q. Would you agree that it could be an issue for<br>9 somebody if they had a gun with a dog ear or a tab<br>10 trigger, and they needed to fire their weapon, and they<br>11 did not fire it because they did not properly place<br>12 their finger on the trigger and disengage that tab?<br>13 MR. HAAZ: Object to form.<br>14 A. I -- I don't think -- I don't -- I don't know of<br>15 anybody -- or of an incidence that -- that -- you know,<br>16 happened, you know, if that's answering your question.<br>17 BY MS. DENNISON:<br>18 Q. Sure. Is it your understanding that the dog ear<br>19 or tab trigger on the Glock is designed to be easily<br>20 disengaged when the trigger is pulled?<br>21 MR. HAAZ: Object to form.<br>22 A. Well, I don't think -- if you're putting your<br>23 finger on that trigger and you're -- and you're coming<br>24 down on it, it's gonna -- you know, it's gonna -- that<br>25 dog ear's gonna go straight down in -- that weapon's |         | 1          | gonna discharge unless, like I said, there's a defective<br>2 part in the gun or something.<br>3 BY MS. DENNISON:<br>4 Q. Right. I mean --<br>5 A. That's --<br>6 Q. Sorry. Were you finished?<br>7 A. Sure.<br>8 Q. Okay, sorry. I did not mean to step over you.<br>9 So -- all right. So are you saying you don't<br>10 have any knowledge of anybody who was unable to or<br>11 misplaced their finger on that trigger and did not get<br>12 that trigger pulled back when they wanted to?<br>13 A. Not to my knowledge, no.<br>14 Q. And alternatively, are you aware of any<br>15 situations where that dog ear or tab trigger on the<br>16 Glock pistol prevented a gun from discharging<br>17 accidentally when something contacted the trigger?<br>18 A. Not -- not to my knowledge if that's what you're<br>19 -- I think I know what you're asking. I mean it's<br>20 pretty cut and dry. It's gonna discharge, I mean,<br>21 unless, like I said, it's defective, but I don't -- I<br>22 don't -- are you trying to say that it would fire<br>23 without the dog ear being down?<br>24 A. No, no. Let me -- let me be clear, all right?<br>25 Are you aware of any circumstances where something  |         |

|            |  |         |            |  |         |
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| 2025-05-23 | <b>Counceller, David</b>                                       | Page 57 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 58 |
| 1          | contacted only the side of a Glock trigger and did not         |         | 1          | side on a Glock, and that dog ear wasn't pressed and, as |         |
| 2          | pull the trigger in an accidental circumstance?                |         | 2          | a result, it prevented that gun from discharging in that |         |
| 3          | MR. HAAZ: Object to form.                                      |         | 3          | accidental circumstance?                                 |         |
| 4          | A. I don't think -- no.  |         | 4          | A. No, no. Sometimes you have to draw me a picture,      |         |
| 5          | BY MS. DENNISON:   |         | 5          | but no.  |         |
| 6          | Q. Do you understand?  |         | 6          | Q. Okay.   |         |
| 7          | A. I think I know what you're trying to say.                   |         | 7          | MS. DENNISON: Those are all my questions.                |         |
| 8          | Q. All right.  |         | 8          | Thank you, sir.  |         |
| 9          | A. You're saying that -- that the gun would                    |         | 9          | RE-EXAMINATION   |         |
| 10         | discharge without the dog ear being down?                      |         | 10         | BY MR. HAAZ:   |         |
| 11         | Q. No. Let me ask it this way, and let me make it              |         | 11         | Q. Just to follow up on that briefly, Ms. Dennison       |         |
| 12         | really clear. Do you have any information that that dog        |         | 12         | was just asking if you knew of any instance of a -- an   |         |
| 13         | ear on the Glock prevents an accidental discharge when         |         | 13         | object contacting the side of a trigger and preventing   |         |
| 14         | something contacts the trigger and pulls it rearward?          |         | 14         | the trigger from discharging. Do you remember that?      |         |
| 15         | MR. HAAZ: Object to form.                                      |         | 15         | A. Go ahead, yeah.                                       |         |
| 16         | A. I don't, no. I don't think so.                              |         | 16         | Q. Yeah. And you said you actually knew of an            |         |
| 17         | BY MS. DENNISON:   |         | 17         | instance of a -- of a fellow officer who was carrying a  |         |
| 18         | Q. Okay.   |         | 18         | Glock and realized that his keys were getting into the   |         |
| 19         | A. I mean -- I mean you're -- you're -- I'm trying             |         | 19         | trigger guard, but that the gun didn't discharge, right? |         |
| 20         | to understand what you're saying. I'm -- I'm -- if you         |         | 20         | A. Yeah, he --   |         |
| 21         | -- are you telling me that like it wouldn't fire, like I       |         | 21         | MS. DENNISON: Object to form.                            |         |
| 22         | said, or -- or -- or it does fire when -- when I didn't        |         | 22         | A. It didn't -- it didn't -- I don't think it -- I       |         |
| 23         | -- once you push it on the side, for instance?                 |         | 23         | don't think it went that far. He was -- told me that     |         |
| 24         | Q. Right. Are you aware of any circumstances where             |         | 24         | his key, one key, was like in the trigger guard, but I   |         |
| 25         | somebody accidentally had the trigger contacted on the         |         | 25         | don't think he hit the trigger or nothing like that. He  |         |
| 2025-05-23 | <b>Counceller, David</b>                                       | Page 59 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 60 |
| 1          | just got kind of like spooked by the -- his key was            |         | 1          | A. Yes.  |         |
| 2          | over, close to that trigger guard or inside of it. But         |         | 2          | Q. You chalked up the 1999 one to your own               |         |
| 3          | it never touched the trigger or anything else.                 |         | 3          | carelessness, right?                                     |         |
| 4          | BY MR. HAAZ:   |         | 4          | A. Yes, yeah.  |         |
| 5          | Q. And do you have any personal knowledge of whether           |         | 5          | Q. Do you own a P320?                                    |         |
| 6          | that key touched the trigger or didn't touch the               |         | 6          | A. No.   |         |
| 7          | trigger?   |         | 7          | Q. A Sig Sauer P320?                                     |         |
| 8          | MS. DENNISON: Objection to form.                               |         | 8          | A. What is it?   |         |
| 9          | A. For him?  |         | 9          | Q. A Sig Sauer P320.                                     |         |
| 10         | BY MR. HAAZ:   |         | 10         | A. No.   |         |
| 11         | Q. Yeah.   |         | 11         | Q. Do you know anything about that gun?                  |         |
| 12         | A. No. He was just telling me about it and that's              |         | 12         | A. Not right off, no.                                    |         |
| 13         | all, but it's pretty -- pretty cut and dry. It wasn't          |         | 13         | Q. All right. Do you know whether it's a                 |         |
| 14         | really elaborated on, so to speak.                             |         | 14         | striker-fired or a hammer-fired gun?                     |         |
| 15         | Q. All right. I just want to clear a few things up.            |         | 15         | A. I don't. I don't know -- I've only owned two --       |         |
| 16         | <b>Am I correct that, to your knowledge and understanding,</b> |         | 16         | owned two. I'm trying to remember what the models was    |         |
| 17         | <b>you know of no instance where somebody tried to pull a</b>  |         | 17         | (sic) -- what they -- they were -- the regular -- they   |         |
| 18         | <b>Glock trigger and was unable to due to the presence of</b>  |         | 18         | were just -- the older Sigs, like back in the 90s, early |         |
| 19         | <b>the tab or the dog ear?</b>                                 |         | 19         | 90s, and I had a couple of them. One was a               |         |
| 20         | <b>A. No.</b>  |         | 20         | 9 millimeter, and one was the .40, and it basically had  |         |
| 21         | <b>Q. I'm correct that you don't know if that ever</b>         |         | 21         | the same characteristics. And they had -- they were a    |         |
| 22         | <b>happened?</b>   |         | 22         | pretty safe gun as far as the safety futures, and they   |         |
| 23         | <b>A. No. Not to my knowledge, no.</b>                         |         | 23         | didn't have no -- they didn't have any dog ears, so to   |         |
| 24         | Q. You had two unintended discharges. One was in               |         | 24         | speak. So what -- what they've been out here now --      |         |
| 25         | 1999, and the other in 2014?                                   |         | 25         | like I said, everybody's been putting them dog ears on   |         |

|            |  |         |            |  |         |
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| 2025-05-23 | <b>Counceller, David</b>                                 | Page 61 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 62 |
| 1          | -- on everything. And -- and like the one I bought the   |         | 1          | Q. A Glock without the tab trigger.                      |         |
| 2          | other day has one, but it has another safety feature too |         | 2          | MS. DENNISON: Objection to form.                         |         |
| 3          | so --  |         | 3          | A. Well, I'm not familiar with -- with what weapon       |         |
| 4          | Q. And what kind of gun is that, the one you bought      |         | 4          | you're talking about so I haven't even -- I mean, like I |         |
| 5          | the other day --   |         | 5          | said, they've got so many, and I'm really -- anymore,    |         |
| 6          | A. It was a Springfield.                                 |         | 6          | I'm -- I'm more of a revolver guy. I went back, because  |         |
| 7          | Q. XD?   |         | 7          | we started out with revolvers and -- and to this day, I  |         |
| 8          | A. Springfield Armory.                                   |         | 8          | carry a revolver --                                      |         |
| 9          | Q. Okay. And was that a striker-fired gun with no        |         | 9          | BY MR. HAAZ:   |         |
| 10         | hammer?  |         | 10         | Q. Understood.   |         |
| 11         | A. Yeah.   |         | 11         | A. I mean for my personal safety, but I do have          |         |
| 12         | Q. And did you -- do you know -- so the gun you just     |         | 12         | automatics. And I -- and the one I purchased, I -- I     |         |
| 13         | bought, the Springfield, had a grip safety and a dog ear |         | 13         | wouldn't even carry it until I took it to the range and  |         |
| 14         | tab trigger?   |         | 14         | shot it, and I haven't took it to the range and shot it  |         |
| 15         | A. Yeah.   |         | 15         | yet and -- so I haven't -- I can't really speak for it   |         |
| 16         | Q. All right. Did you know the P320 is a                 |         | 16         | either.  |         |
| 17         | striker-fired gun, it doesn't have a grip safety, and is |         | 17         | MR. HAAZ: Okay. Mr. Counceller, I don't                  |         |
| 18         | offered without -- I'm sorry, is a striker-fired gun     |         | 18         | have any other questions. Thanks for your time. I        |         |
| 19         | that is offered without a manual safety --               |         | 19         | appreciate it.   |         |
| 20         | MS. DENNISON: Objection to form.                         |         | 20         | MS. DENNISON: Thank you, Mr. Counceller.                 |         |
| 21         | BY MR. HAAZ:   |         | 21         | THE WITNESS: No problem.                                 |         |
| 22         | Q. -- and has no dog ear or tab trigger?                 |         | 22         | VIDEOGRAPHER: All right, one moment.                     |         |
| 23         | MS. DENNISON: Objection to form.                         |         | 23         | This now concludes the videoconference                   |         |
| 24         | A. Some -- something similar to a Glock?                 |         | 24         | deposition of David Counceller.                          |         |
| 25         | BY MR. HAAZ:   |         | 25         | Counsel, will it be the same orders as the               |         |
| 2025-05-23 | <b>Counceller, David</b>                                 | Page 63 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 64 |
| 1          | first deposition?  |         | 1          | THE WITNESS: I waive that.                               |         |
| 2          | MS. DENNISON: It will be for me.                         |         | 2          | VIDEOGRAPHER: All right, one moment.                     |         |
| 3          | MR. HAAZ: Yes.   |         | 3          | We are now going off the record on May 23,               |         |
| 4          | VIDEOGRAPHER: Okay. And do you want to                   |         | 4          | 2025 at 2:38 p.m. Eastern Time.                          |         |
| 5          | advise of read or waive?                                 |         | 5          | (Whereupon, the above-named deposition was concluded at  |         |
| 6          | MS. DENNISON: Mr. Counceller, you have the               |         |            |  |         |
| 7          | opportunity to either -- read and sign the transcript    |         |            |  |         |
| 8          | from this deposition. So you can get a printed-out copy  |         |            |  |         |
| 9          | of the transcript from it, you can review it for         |         |            |  |         |
| 10         | accuracy, you can submit an errata sheet if there is     |         |            |  |         |
| 11         | anything incorrect, or you can just sign that it is      |         |            |  |         |
| 12         | good, or you can waive that right and not read the       |         |            |  |         |
| 13         | transcript.  |         |            |  |         |
| 14         | THE WITNESS: I just -- if you need me to                 |         |            |  |         |
| 15         | sign something, fine, but I waive anything. I don't --   |         |            |  |         |
| 16         | you know -- I mean this isn't -- you -- you've -- you've |         |            |  |         |
| 17         | brought me on here to ask me questions about a Glock and |         |            |  |         |
| 18         | the incidents I've had and, you know, I have no dog in   |         |            |  |         |
| 19         | this fight, so to speak, you know? And so there's -- it  |         |            |  |         |
| 20         | doesn't really make any difference to me.                |         |            |  |         |
| 21         | MS. DENNISON: So this is totally up to you.              |         |            |  |         |
| 22         | We don't need anything from you, so this is up to you.   |         |            |  |         |
| 23         | It's your option. So if you want to read it, make sure   |         |            |  |         |
| 24         | it's all accurate and sign it, you can. If you don't     |         |            |  |         |
| 25         | want to do that, then you can say that you waive that.   |         |            |  |         |

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| 2025-05-23 | <b>Counceller, David</b>                          | Page 1 | 2025-05-23 | <b>Counceller, David</b>                                | Page 2 |
| 1          | IN THE UNITED STATES DISTRICT COURT               |        | 1          | APPEARANCES:  |        |
| 2          |   |        | 2          | LITTLETON JOYCE UGHETTA & KELLY LLP                     |        |
| 3          | Civil action No: 1:23-cv-00327-JDL                |        | 3          | 2460 N. Courtenay Pkwy, Suite 204                       |        |
| 4          |   |        | 4          | 646-708-4844  |        |
| 5          |   |        | 5          | Attorney for Defendant Sig Sauer, Inc.                  |        |
| 6          |   |        | 6          |   |        |
| 7          |   |        | 7          | BY: JEFFREY RUSSELL, ESQUIRE                            |        |
| 8          |   |        | 8          | Portland, ME 04101                                      |        |
| 9          |   |        | 9          | jrussell@verrill-law.com                                |        |
| 10         |   |        | 10         |   |        |
| 11         |   |        | 11         | SALTZ, MONGELUZZI & BENDESKY, P.C.                      |        |
| 12         |   |        | 12         | One Liberty Place, 52nd Fl                              |        |
| 13         |   |        | 13         | Philadelphia, PA 19103                                  |        |
| 14         |   |        | 14         | shaaz@smbb.com  |        |
| 15         |   |        | 15         |   |        |
| 16         |   |        | 16         |   |        |
| 17         | for the State of Maine, via Zoom videoconference, |        | 17         |   |        |
| 18         | notice given.                                     |        | 18         |   |        |
| 19         |   |        | 19         |   |        |
| 20         |   |        | 20         |   |        |
| 21         |   |        | 21         |   |        |
| 22         |   |        | 22         |   |        |
| 23         |   |        | 23         |   |        |
| 24         |   |        | 24         |   |        |
| 25         |   |        | 25         |   |        |
| 2025-05-23 | <b>Counceller, David</b>                          | Page 3 | 2025-05-23 | <b>Counceller, David</b>                                | Page 4 |
| 1          | INDEX   |        | 1          | (This deposition was taken before Debra J. Fusco,       |        |
| 2          |   |        | 2          | Notary Public, via Zoom videoconference, on May 23,     |        |
| 3          |   |        | 3          | 2025, beginning at 1:10 p.m.)                           |        |
| 4          |   |        | 4          | VIDEOGRAPHER: We are now on the record.                 |        |
| 5          |   |        | 5          | The time is 1:10 p.m. Eastern Time on May 23, 2025.     |        |
| 6          |   |        | 6          | This begins the videoconference deposition of David     |        |
| 7          |   |        | 7          | Counceller taken in the matter of David Alan Cole and   |        |
| 8          | EXHIBITS  |        | 8          | Kimberly Cole versus Sig Sauer, Incorporated. The case  |        |
| 9          |   |        | 9          | number is 1:23-cv-00327-JDL, and is filed in the United |        |
| 10         | NONE  |        | 10         | States District Court for the District of Maine.        |        |
| 11         |   |        | 11         | My name is George Ellis, I am your remote               |        |
| 12         |   |        | 12         | videographer. Our court reporter is Debra Fusco, and we |        |
| 13         |   |        | 13         | are representing Esquire Deposition Solutions.          |        |
| 14         |   |        | 14         | Counsel, please state your name and who you             |        |
| 15         |   |        | 15         | represent, after which the court reporter will swear in |        |
| 16         |   |        | 16         | the witness.  |        |
| 17         |   |        | 17         | MS. DENNISON: Kristen Dennison from                     |        |
| 18         |   |        | 18         | Littleton Joyce Ughetta & Kelly, and I represent Sig    |        |
| 19         |   |        | 19         | Sauer, Inc.   |        |
| 20         |   |        | 20         | MR. HAAZ: Sam Haaz on behalf of David and               |        |
| 21         |   |        | 21         | Kimberly Cole.  |        |
| 22         |   |        | 22         | MR. RUSSELL: I'm also here, Jeff Russell,               |        |
| 23         |   |        | 23         | Verrill Dana, LLP on behalf of Sig Sauer.               |        |
| 24         |   |        | 24         | MS. DENNISON: Erica Esposito from Sig Sauer             |        |
| 25         |   |        | 25         | is also present.  |        |

|            |  |        |            |  |        |
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| 2025-05-23 | <b>Counceller, David</b>                                       | Page 5 | 2025-05-23 | <b>Counceller, David</b>                                 | Page 6 |
| 1          | (The deponent was administered the oath by the Notary Public.) |        | 1          | for the record to make sure everything is audible.       |        |
| 2          | DAVID COUNCELLER, after having been                            |        | 2          | We can only have one person speaking at a time.          |        |
| 3          | duly sworn by the Notary Public,                               |        | 3          | In the normal course of conversation, it is easy to      |        |
| 4          | was deposed and testified as                                   |        | 4          | anticipate what my question is and begin your response   |        |
| 5          | follows:   |        | 5          | before I have finished my full question. For purposes    |        |
| 6          | EXAMINATION  |        | 6          | of the record today, I would ask that you allow me to    |        |
| 7          | BY MS. DENNISON:   |        | 7          | completely finish my question before you begin your      |        |
| 8          | Q. Good afternoon, Mr. Counceller. My name is                  |        | 8          | response, and I will allow you to completely finish your |        |
| 9          | Kristen Dennison. I represent Sig Sauer in an action           |        | 9          | response before I begin my next question, okay?          |        |
| 10         | that's been brought against it by David and Kimberly           |        | 10         | A. Okay.   |        |
| 11         | Cole. We are here today pursuant to a subpoena that my         |        | 11         | Q. Great. We are going to try to be as quick as we       |        |
| 12         | office issued to you. Is that your understanding?              |        | 12         | can today with you. That said, if you need a break at    |        |
| 13         |  |        | 13         | any point in time, please let us know that, and we'll be |        |
| 14         | A. Yes, ma'am.   |        | 14         | happy to accommodate you.                                |        |
| 15         | Q. Okay. And thank you for your appearance here                |        | 15         | A. Well, I would really like to go put my ear plugs      |        |
| 16         | this morning.  |        | 16         | in at the moment.  |        |
| 17         | Have you ever had your deposition taken before?                |        | 17         | Q. If you want to go do that, you can step away and      |        |
| 18         | A. Not like this.  |        | 18         | go put your earplugs in, that's fine.                    |        |
| 19         | Q. Okay. Let me give you a few brief instructions              |        | 19         | A. I think I will because this is kind of new to me      |        |
| 20         | before we begin. We do have a court reporter                   |        | 20         | and I'm -- I need to sharpen up my hearing here real     |        |
| 21         | transcribing everything here today so I need to make           |        | 21         | quick so I'll be right back.                             |        |
| 22         | sure that all of your responses to my questions are            |        | 22         | MS. DENNISON: Let's go off the record a                  |        |
| 23         | verbal. In particular, I need an audible yes for a no          |        | 23         | moment.  |        |
| 24         | as opposed to a nod or a shake of the head. If you             |        | 24         | VIDEOGRAPHER: Going off the record, the                  |        |
| 25         | forget, don't worry about it, one of us will correct it        |        | 25         | time is 1:13.  |        |
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| 1          | (OFF RECORD)   |        | 1          | Q. Okay, great. And the oath that you took today is      |        |
| 2          | VIDEOGRAPHER: Back on the record. The time                     |        | 2          | the same as if you were testifying in a court of law.    |        |
| 3          | is 1:14.   |        | 3          | Do you understand that?                                  |        |
| 4          | MS. DENNISON: Okay.  |        | 4          | A. Yes.  |        |
| 5          | BY MS. DENNISON:   |        | 5          | Q. Great. Mr. Counceller, are you taking any             |        |
| 6          | Q. Mr. Counceller, can you hear -- can you hear                |        | 6          | medications that would prevent you from testifying       |        |
| 7          | everything okay now?   |        | 7          | truthfully and honestly to the best of your              |        |
| 8          | A. Yes.  |        | 8          | recollection?  |        |
| 9          | Q. Great. So I'm going to ask you some questions               |        | 9          | A. No.   |        |
| 10         | about an unintentional discharge that I understand you         |        | 10         | Q. All right. Did you review any documents to            |        |
| 11         | experienced a little over 10 years ago, and I need to          |        | 11         | prepare for your deposition here today?                  |        |
| 12         | have you answer my questions truthfully and honestly to        |        | 12         | A. No.   |        |
| 13         | the best of your recollection, okay?                           |        | 13         | Q. Can you please state your full name?                  |        |
| 14         | A. Yes, ma'am.   |        | 14         | A. David Joe, is J-O-E, Counceller,                      |        |
| 15         | Q. Great. If you don't hear my question, please let            |        | 15         | C-O-U-N-C-E-L-L-E-R.                                     |        |
| 16         | me know that, and I will repeat it. If you don't               |        | 16         | Q. Where are you currently located, Mr. Counceller?      |        |
| 17         | understand my question, which is quite possible, please        |        | 17         | A. Connersville, Indiana.                                |        |
| 18         | let me know that, and I will be happy to rephrase it,          |        | 18         | Q. Have you ever been known by any other names?          |        |
| 19         | okay?  |        | 19         | A. No.   |        |
| 20         | A. Okay.   |        | 20         | Q. Do you reside in Connersville, Indiana?               |        |
| 21         | Q. If you answer one my questions, I am going to               |        | 21         | A. Yes.  |        |
| 22         | assume that you heard my question, that you understood         |        | 22         | Q. Mr. Counceller, have you experienced an               |        |
| 23         | my question, and that you answered it truthfully and           |        | 23         | unintended discharge with a Glock pistol?                |        |
| 24         | honestly to the best of your recollection; is that fair?       |        | 24         | A. Yes.  |        |
| 25         | A. Sure, yup.  |        | 25         | Q. When did you experience an unintended discharge       |        |

|   |                   |  |            |                   |         |
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|   |                   |  |            |                   |         |
| <p>1 with a Glock pistol?</p> <p>2 A. It was in January, 2014.</p> <p>3 Q. What kind of Glock was involved?</p> <p>4 A. It was a Glock 23.</p> <p>5 Q. Was that your Glock 23?</p> <p>6 A. It was an issued weapon by my police department.</p> <p>7 Q. What police department?</p> <p>8 A. Connersville City Police Department.</p> <p>9 Q. How long have you carried that Glock 23?</p> <p>10 A. Oh, several years. I was a -- I was the chief of police at the time, and we had carried Glock -- Glocks.</p> <p>11 The -- the -- the Glock 23 was a little shorter model</p> <p>12 than the 22 that the original officers would carry.</p> <p>13</p> <p>14 Q. As chief of police -- was that for Connersville Police Department?</p> <p>15 A. Yes, it was.</p> <p>16 Q. As chief of police for the Connersville Police Department, did you select the Glock 23 pistol?</p> <p>17 A. No. It's -- it was done several years -- that was like our -- I think that was our second issue. I think the first time we were issued back in '99, something like that. Then we carried -- I got the Generation 2, then we went to the Generation 3. And since then, they go to 4 and 5.</p> <p>18</p> <p>19 Q. All Glocks?</p> |                   | <p>1 A. On the Glocks.</p> <p>2 Q. Okay, great. And the Glock 23 pistol that you were carrying in January of 2014, did that have a little blade or -- in the trigger?</p> <p>3 MR. HAAZ: Objection --</p> <p>4 A. Yes, we call it a little dog ear.</p> <p>5 BY MS. DENNISON:</p> <p>6 Q. You called it a dog --</p> <p>7 A. If you'd like -- if you would like, ma'am, I could probably pull it up and show it to you.</p> <p>8 Q. Do you still have that pistol?</p> <p>9 A. I don't have that one, but I have another one, a Generation 4, which is the same thing, just a newer model. It's the same dog ear, same trigger, everything.</p> <p>10</p> <p>11 Q. Okay. All right. And in January of 2014, can you tell me the circumstances surrounding your unintended discharge?</p> <p>12 A. Well, I had stopped into a local gun shop here in Connersville, and the owner of the place is a friend of mine, and there was another Glock, it was a 380, a little bit smaller, and it was like a newer version.</p> <p>13 And I was looking at it, and I pulled my weapon out, carefully, and I was comparing the size, basically, for being carried for undercover or just plainclothes to</p> <p>14 where it's concealed, and I was comparing it with this</p> <p>15</p> |            |                   |         |

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| 1          | record, that's all they are. So now that that's on the          |         | 1          | VIDEOGRAPHER: Off the record. The time is                |         |
| 2          | record, I turn the question back over to Kristen and            |         | 2          | 1:24.  |         |
| 3          | apologize for any interruption.                                 |         | 3          | (OFF RECORD)   |         |
| 4          | BY MS. DENNISON:  |         | 4          | VIDEOGRAPHER: Back on the record. The time               |         |
| 5          | Q. Thank you, Mr. Counceller. I'm going to ask you              |         | 5          | is 1:25.   |         |
| 6          | a few questions to break that down a little bit, okay?          |         | 6          | BY MS. DENNISON:   |         |
| 7          | A. Sure.  |         | 7          | Q. Okay, Mr. Counceller, while we went off the           |         |
| 8          | <b>Q. Let's start with, what kind of holster were you</b>       |         | 8          | record, you went and retrieved the holster that you were |         |
| 9          | <b>using at the time?</b>                                       |         | 9          | wearing on the day of the unintended discharge. Can you  |         |
| 10         | <b>A. It was a leather holster. It didn't have a</b>            |         | 10         | put that holster up to the camera, to the video feed, so |         |
| 11         | <b>strap. It just sat as -- as kind of like -- it was a</b>     |         | 11         | that we can see it?                                      |         |
| 12         | <b>warn leather. I mean it's a -- fit comfortable and</b>       |         | 12         | A. Yes, (indicating). As you see, it's a black           |         |
| 13         | <b>everything, but it was just really sitting down in -- in</b> |         | 13         | leather. It's open here at the top and the -- I'm half   |         |
| 14         | <b>the holster itself, and it was leather.</b>                  |         | 14         | blind too. Anyway --                                     |         |
| 15         | Q. Okay. The holster -- do you remember the brand               |         | 15         | THE WITNESS: Honey?                                      |         |
| 16         | of the holster?   |         | 16         | UNIDENTIFIED ATTENDEE: Yes.                              |         |
| 17         | A. I got it -- I got it upstairs. I can --                      |         | 17         | THE WITNESS: Can you read that -- the make               |         |
| 18         | Q. You have the actual holster upstairs?                        |         | 18         | of this holster? You might want to turn a light on or    |         |
| 19         | A. Yes.   |         | 19         | something.   |         |
| 20         | Q. Would you -- would you mind getting that, and                |         | 20         | UNIDENTIFIED ATTENDEE: Glock.                            |         |
| 21         | then we can take a --   |         | 21         | THE WITNESS: No, that's -- that's a Glock.               |         |
| 22         | A. Sure.  |         | 22         | UNIDENTIFIED ATTENDEE: Masters's --                      |         |
| 23         | MS. DENNISON: All right. Let's go off the                       |         | 23         | Masters's Holder (sic).                                  |         |
| 24         | record for a moment.  |         | 24         | THE WITNESS: It's a what?                                |         |
| 25         | THE WITNESS: Be right back.                                     |         | 25         | UNIDENTIFIED ATTENDEE: Glock The Masters's               |         |
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| 1          | Holder (sic).   |         | 1          | Q. Thank you. All right, okay. So, Mr. Counceller,       |         |
| 2          | THE WITNESS: Masters's Holder (sic).                            |         | 2          | that was the holster. I'm going to ask you about the     |         |
| 3          | UNIDENTIFIED ATTENDEE: 17, 22, 31.                              |         | 3          | information you gave about -- you said he told you about |         |
| 4          | THE WITNESS: Okay.  |         | 4          | a thousand instances of similar issues with drawstrings. |         |
| 5          | UNIDENTIFIED ATTENDEE: It's a Glock holder                      |         | 5          | My question for you is, who is the "he" to which you     |         |
| 6          | (sic).  |         | 6          | were referring?  |         |
| 7          | A. I'll -- that's -- I don't know if you can see                |         | 7          | UNIDENTIFIED ATTENDEE: Rafael Sanchez.                   |         |
| 8          | that or not, but that's the make of it.                         |         | 8          | A. Rafael San -- Sanchez.                                |         |
| 9          | BY MS. DENNISON:  |         | 9          | BY MS. DENNISON:   |         |
| 10         | Q. Okay. And so that is a Glock --                              |         | 10         | Q. And who is Rafael Sanchez?                            |         |
| 11         | A. Glock --   |         | 11         | A. He is a reporter for -- was a reporter for            |         |
| 12         | Q. Glock Masters's Holster?                                     |         | 12         | Channel 6 news. He's on a -- another network up in       |         |
| 13         | A. Yes.   |         | 13         | Indianapolis also now. I think it's -- I don't know      |         |
| 14         | Q. 17, 22, 31?  |         | 14         | what the -- I don't know what it is right now.           |         |
| 15         | UNIDENTIFIED ATTENDEE: 77.                                      |         | 15         | UNIDENTIFIED ATTENDEE: He's an                           |         |
| 16         | A. I think it was 77 she said.                                  |         | 16         | investigative reporter. He's --                          |         |
| 17         | BY MS. DENNISON:  |         | 17         | THE WITNESS: He's what?                                  |         |
| 18         | Q. Oh, 77, 33 -- or 77, 22, 31.                                 |         | 18         | UNIDENTIFIED ATTENDEE: He's an                           |         |
| 19         | UNIDENTIFIED ATTENDEE: Yeah.                                    |         | 19         | investigative --   |         |
| 20         | BY MS. DENNISON:  |         | 20         | A. He's an investigative reporter with --                |         |
| 21         | Q. And --   |         | 21         | THE WITNESS: Who's he with now?                          |         |
| 22         | A. Yeah.  |         | 22         | UNIDENTIFIED ATTENDEE: WRTV ABC.                         |         |
| 23         | Q. Great. And, for the record, who is she? Is                   |         | 23         | A. WR --   |         |
| 24         | that your wife?   |         | 24         | MR. HAAZ: Kristen, I'm going to object to                |         |
| 25         | A. My fiancee. Her name is Shannon.                             |         | 25         | any assistance with his testimony.                       |         |

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| 1          | MS. DENNISON: Yeah.                                      |         | 1          | Q. And when he told you that he was aware of a           |         |
| 2          | MR. HAAZ: Mr. Counceller, I understand you               |         | 2          | thousand instances of similar issues, what -- did you    |         |
| 3          | haven't done this before, but the rules don't allow for  |         | 3          | have an understanding as to what he meant by "similar    |         |
| 4          | you to consult with others or have side conversations so |         | 4          | issues"?   |         |
| 5          | --   |         | 5          | MR. HAAZ: Object to form.                                |         |
| 6          | THE WITNESS: Okay.                                       |         | 6          | BY MS. DENNISON:   |         |
| 7          | MR. HAAZ: You're just going to have to                   |         | 7          | Q. You can answer.                                       |         |
| 8          | testify to the best of your recollection.                |         | 8          | A. I can answer?   |         |
| 9          | MS. DENNISON: Yeah, and it's okay. If you                |         | 9          | Q. Yes, you may answer.                                  |         |
| 10         | don't -- and I'm not sure --                             |         | 10         | A. Just that -- I'm not too sure -- I'm not too          |         |
| 11         | BY MS. DENNISON:   |         | 11         | sure. I know he interviewed a few people that's had      |         |
| 12         | Q. I think I forgot this instruction, Mr.                |         | 12         | similar situations like mine, but I don't know who they  |         |
| 13         | Counceller, so that's on me. But if you don't know the   |         | 13         | were, all this type of thing or anything else. He just   |         |
| 14         | answer to a question, please just tell me that -- that   |         | 14         | did an investigation, and I don't know where he come up  |         |
| 15         | you don't know, and that's fine, okay?                   |         | 15         | with a thousand either.                                  |         |
| 16         | A. Okay.   |         | 16         | Q. Do you have any information as to whether those       |         |
| 17         | Q. Thank you so much. All right. So -- so Rafael         |         | 17         | thousand instances involved Glock pistols or a variety   |         |
| 18         | Sanchez told you that he knew of a thousand instances of |         | 18         | of pistols or something else?                            |         |
| 19         | similar issues; is that what you testified to?           |         | 19         | MR. HAAZ: Object to form.                                |         |
| 20         | MR. HAAZ: Objection.                                     |         | 20         | BY MS. DENNISON:   |         |
| 21         | A. That's what he told me, you know, back then, and      |         | 21         | Q. You can answer.                                       |         |
| 22         | I don't think he contacted with everyone that -- that -- |         | 22         | A. Several were Glocks, and then I think he told me      |         |
| 23         | but he did get ahold of some that have had dis --        |         | 23         | one was a Sig.   |         |
| 24         | accidental discharges.                                   |         | 24         | Q. Okay.   |         |
| 25         | BY MS. DENNISON:   |         | 25         | A. But I don't know the circumstances of it.             |         |
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| 1          | Q. Okay. And you can ignore both of us if we say         |         | 1          | have some questions for you on that, but I want to       |         |
| 2          | objection to form, you can just ignore us and answer the |         | 2          | confirm that this is what you saw; okay, Mr. Counceller? |         |
| 3          | question. I'm sure I might do the same when Mr. Haaz     |         | 3          | THE WITNESS: Sure.                                       |         |
| 4          | asks you some questions. Again, that's just to --        |         | 4          | (Whereupon, a video is being played.)                    |         |
| 5          | that's just for us to deal with later, but you don't     |         | 5          | MR. HAAZ: Kristen? Kristen.                              |         |
| 6          | have to worry about it, okay?                            |         | 6          | (Whereupon, a video is being played.)                    |         |
| 7          | A. Okay.   |         | 7          | VIDEOGRAPHER: Excuse me?                                 |         |
| 8          | Q. Thanks. All right, so -- all right, so I'm going      |         | 8          | MR. HAAZ: Kristen?                                       |         |
| 9          | to go ahead and I'm going to show you what I believe is  |         | 9          | MS. DENNISON: Yes.                                       |         |
| 10         | the Channel 6 news report. So I'm going to go ahead and  |         | 10         | MR. HAAZ: I can't see the video. Can                     |         |
| 11         | -- well, let me ask you first: Did you see the Channel   |         | 11         | anyone else not see it?                                  |         |
| 12         | 6 news report about your incident?                       |         | 12         | MS. DENNISON: Oh, my God.                                |         |
| 13         | A. Yes.  |         | 13         | VIDEOGRAPHER: No.  |         |
| 14         | Q. Okay. I'm going to go ahead and play the video.       |         | 14         | MS. DENNISON: I forgot to share it. How                  |         |
| 15         | MS. DENNISON: I'm going to play the whole                |         | 15         | about I share it.  |         |
| 16         | video, Sam, and I understand that there will be some     |         | 16         | Thank you, Sam. Thank you for interrupting               |         |
| 17         | hearsay played in here that you will have an objection   |         | 17         | before I went any further with that.                     |         |
| 18         | to. You can note that now, or you can note it later,     |         | 18         | Let me share the video. I got ahead of                   |         |
| 19         | okay?  |         | 19         | myself, and we'll start over. I'm going to start from    |         |
| 20         | MR. HAAZ: Yeah, to the extent that the                   |         | 20         | the beginning. My apologies. Can you all see it now?     |         |
| 21         | video will be played or any portion of this video will   |         | 21         | THE WITNESS: Yes.  |         |
| 22         | be played at trial, I mean we'd object to the entire     |         | 22         | (Whereupon, a video is being played.)                    |         |
| 23         | video coming in.   |         | 23         | MS. DENNISON: Okay.                                      |         |
| 24         | MS. DENNISON: Understood. So for now, I'm                |         | 24         | BY MS. DENNISON:   |         |
| 25         | just going to play the Channel 6 news video because I'll |         | 25         | Q. Mr. Counceller, is that the ABC News report that      |         |

|            |   |         |   |   |         |
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|            | <p>1 you recall previously seeing?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And that was reported by Rafael Sanchez,</p> <p>4 that's what you were referencing a little bit ago; is</p> <p>5 that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. There were some other individuals</p> <p>8 mentioned in that news report. Did you ever speak with</p> <p>9 any of the other individuals that reported having a</p> <p>10 discharge with a drawstring from their jacket?</p> <p>11 A. No.</p> <p>12 Q. Okay. Have you ever spoken with anybody else who</p> <p>13 experienced an accidental discharge that you believed</p> <p>14 was similar to yours?</p> <p>15 A. No.</p> <p>16 MR. HAAZ: Object to form.</p> <p>17 BY MS. DENNISON:</p> <p>18 Q. Okay. Have you ever seen any other accidental</p> <p>19 discharges besides yours?</p> <p>20 A. On a video one time, something similar happened</p> <p>21 on a range with an individual, but I don't remember</p> <p>22 anything about where it happened or who it was or</p> <p>23 anything else.</p> <p>24 Q. There was a reference within the news report to</p> <p>25 another accidental discharge from 1999. Had you had</p>  |         |   | <p>1 another accidental discharge in 1999?</p> <p>2 A. I did, yes.</p> <p>3 Q. What weapon was involved with that accidental</p> <p>4 discharge in 1999?</p> <p>5 A. It was a 380 called a Grendel. It's a -- it's --</p> <p>6 it's another -- well, that was totally my fault. The</p> <p>7 gun was defective, the retaining pin that would hold up</p> <p>8 the receiver to the lower part of the receiver kept --</p> <p>9 every time you'd shoot it, it would work its way out.</p> <p>10 And so my son had it for a while, and he told me it was</p> <p>11 defective and what it was doing, and so I said okay. So</p> <p>12 I put it in a box, and he was -- I was gonna take it, at</p> <p>13 the time, to a local gunsmith and have him look at it.</p> <p>14 Well, it's -- the characteristics of that gun was that</p> <p>15 you have to open it up, and you didn't have a magazine</p> <p>16 that went up through the bottom of the handle. You</p> <p>17 opened it up, and then you fed it down into the handle.</p> <p>18 And when you let it go, it automatically would put one</p> <p>19 up -- put a round up into the barrel, up to what we call</p> <p>20 the pipe. Well, when my son gave it to me, it was in</p> <p>21 two pieces with the pin. And -- and like I said, I was</p> <p>22 doing some laundry one night, and I come across that</p> <p>23 box, and I looked at that gun. I said, yeah, I need to</p> <p>24 take it up to the local gunsmith and get it fixed. So I</p> <p>25 see that the handle was separated from the upper</p> |         |
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|            | <p>1 receiver and -- the slide -- and I put all -- I unloaded</p> <p>2 it where the handle is. Because, like I said, you fed</p> <p>3 it down at the -- in the bottom, you didn't have a</p> <p>4 magazine. So I flipped all them rounds out of it. I</p> <p>5 went to put it back together and when I did, I -- if I</p> <p>6 can put my hand up here, I had it here like this, and I</p> <p>7 went to pull it together to put this pin in to hold it</p> <p>8 -- to hold it together to show the gunsmiths how -- what</p> <p>9 -- what the malfunction was on it. And in my</p> <p>10 carelessness of not thinking -- and, like I said, if you</p> <p>11 lo -- load it and you let it go forward, it</p> <p>12 automatically -- one goes up into the barrel. I didn't</p> <p>13 drop that barrel out and see if there was a round up in</p> <p>14 that barrel. And when I shoved it together like this,</p> <p>15 it -- it went back and hit the firing pin, and</p> <p>16 discharged in my hand. And I don't know if you can see</p> <p>17 it or not, but it -- it's right here, it's -- that's an</p> <p>18 exit wound, and that was -- or, excuse me, that was the</p> <p>19 entrance wound, this is the ex -- ex -- exit wound.</p> <p>20 And -- and, yeah, that was -- and I knew right after it</p> <p>21 happened, I -- that was carelessness on my part. I</p> <p>22 should have -- I should have dropped that barrel down</p> <p>23 because that was the -- that's the way the gun was</p> <p>24 designed, and it's nobody's fault but my own.</p> <p>25 Q. Okay. And in the video, did you see a</p> |         | <p>1 <b>depiction -- in the ABC video that we just played, did</b></p> <p>2 <b>you see a depiction of your accidental discharge from</b></p> <p>3 <b>2014 with the Glock?</b></p> <p>4 MR. HAAZ: Object to form.</p> <p>5 A. Yes. Yes. You're asking me about -- about the</p> <p>6 video?</p> <p>7 BY MS. DENNISON:</p> <p>8 Q. Yes.</p> <p>9 A. Yeah.</p> <p>10 Q. And if I share my screen right now, I have the</p> <p>11 video freeze framed here. Is this you on the -- on the</p> <p>12 right side of the counter with the hat on?</p> <p>13 A. Yup, that's me.</p> <p>14 Q. And this was the gun shop that you were in at the</p> <p>15 time?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And I'm going to go a little bit further</p> <p>18 with it to where the discharge was, and I'm going to</p> <p>19 just put it on without sound. So I'm going to share it</p> <p>20 -- my screen again. And on the screen, is this the --</p> <p>21 is this the gun shop that you were in, Wolf's Gun Shop?</p> <p>22 A. Yes.</p> <p>23 (Whereupon, a video is being played.)</p> <p>24 Q. Okay. This video that's playing right now, do</p> <p>25 you know the video that just played moving up into the</p> |   |         |

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| <p>1 gun shop, was that video that you had taken or that<br/> 2 somebody else had taken?<br/> 3 A. That was what Ra -- the cameraman from Rafael<br/> 4 Sanchez. His cameraman, I think, shot that.<br/> 5 Q. Okay.<br/> 6 A. If you could notice, I'm in -- I'm in uniform<br/> 7 there.<br/> 8 Q. Okay. And this -- this portion of video where<br/> 9 you're walking into the gun shop, was that a video taken<br/> 10 on the day of the incident or at some other time?<br/> 11 A. No, that was after the fact.<br/> 12 Q. Okay.<br/> 13 A. When he was doing the story.<br/> 14 Q. So I'm going to keep playing right now.<br/> 15 (Whereupon, a video is being played.)<br/> 16 Q. Now, I've just stopped this video at 34 seconds.<br/> 17 Is this video of you on the day of the accident?<br/> 18 A. Yes.<br/> 19 Q. Do you know where this video was taken from?<br/> 20 A. That -- that was a security camera that Mr. Wolf,<br/> 21 the owner of the gun shop, had.<br/> 22 Q. Okay. I'm going to go ahead --<br/> 23 (Whereupon, a video is being played.)<br/> 24 Q. Right here, is he -- are you -- let me strike<br/> 25 that. Right here, what we see on the camera, is there a</p> | <p>1 firearm that's being exchanged between the two of you?<br/> 2 A. Yes, he was showing me this other gun that I<br/> 3 asked to look at.<br/> 4 Q. Okay. I'm going to keep playing it.<br/> 5 (Whereupon, a video is being played.)<br/> 6 Q. So is this you looking at that other gun?<br/> 7 A. Yes.<br/> 8 Q. All right. And now we have gone to another video<br/> 9 that is not the video of your incident for a little bit.<br/> 10 I'm going to stop it again and start playing it at<br/> 11 47 seconds.<br/> 12 (Whereupon, a video is being played.)<br/> 13 Q. Is that you again in this video?<br/> 14 A. Yes.<br/> 15 Q. And are you looking at that weapon from the store<br/> 16 that you wanted to take a look at?<br/> 17 A. Yes.<br/> 18 Q. Okay. I'm going to hit play.<br/> 19 (Whereupon, a video is being played.)<br/> 20 Q. Now, I just stopped it at 51 seconds. Do you<br/> 21 know what you were doing right there?<br/> 22 A. Yes.<br/> 23 Q. What were you doing?<br/> 24 A. I'm pulling out my weapon to compare it with the<br/> 25 other one.</p> |         |            |                   |         |
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| <p>1 Q. Okay. And then right now, are you putting that<br/> 2 back into your holster?<br/> 3 A. Yes.<br/> 4 Q. And that was the holster that you showed us a<br/> 5 moment ago?<br/> 6 A. Yes.<br/> 7 Q. That was an outside the waistband holster?<br/> 8 A. Yes.<br/> 9 Q. Okay. So you had it clipped on your right hip?<br/> 10 A. Yes.<br/> 11 (Whereupon, a video is being played.)<br/> 12 Q. And then what are you doing right there?<br/> 13 A. I'm -- I got my jacket, and I'm pulling it upward<br/> 14 to put it -- to conceal it.<br/> 15 (Whereupon, a video is being played.)<br/> 16 Q. Okay. And what just happened right there? I've<br/> 17 stopped it at 1 minute and 3 seconds into the video.<br/> 18 What just happened?<br/> 19 A. I felt like when -- when I -- when I put it in my<br/> 20 holster, it didn't go in real smoothly, like I had some<br/> 21 kind of resistance.<br/> 22 Q. Okay. And then what happened?<br/> 23 A. Well, then after I -- I felt like it was in<br/> 24 there, then I went to pull up on my jacket and -- to<br/> 25 conceal it, and it -- and then it discharged as my hand</p>  | <p>1 was there pulling up on the jacket.<br/> 2 Q. Okay. Now, there were portions of this video in<br/> 3 which there were statements made by you. Do you recall<br/> 4 seeing that?<br/> 5 A. Pardon?<br/> 6 Q. Well, before I get to that, let me ask you, the<br/> 7 portions of the video that I just showed you depicting<br/> 8 your discharge incident, are those true and accurate<br/> 9 representations of what happened when your Glock 23<br/> 10 discharged when you were putting it into your holster in<br/> 11 January of 2014?<br/> 12 MR. HAAZ: Object to form.<br/> 13 BY MS. DENNISON:<br/> 14 Q. You can answer.<br/> 15 A. Yes.<br/> 16 Q. Okay. I'm going to stop sharing for a moment.<br/> 17 Now, you gave an interview as well; is that<br/> 18 correct?<br/> 19 A. (No response.)<br/> 20 Q. To Rafael Sanchez?<br/> 21 A. Yes.<br/> 22 Q. Why did you give an interview to Rafael Sanchez<br/> 23 of this incident?<br/> 24 A. I -- I had a concern like the other officer in<br/> 25 that one video. Of course I didn't see that video until</p>       |         |            |                   |         |

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|            | <p>1 later but -- until this -- this program came out, but I<br/>     2 had a concern about if someone gets a -- something stuck<br/>     3 in their trigger guard, whether it be a drawstring or<br/>     4 keys or whatever people might carry and if something can<br/>     5 worm their way into a trigger guard and maybe -- they<br/>     6 might be in Walmart or someplace bending over to pick up<br/>     7 a can of oil off the bottom shelf or something and they<br/>     8 move or something. And then if something like that<br/>     9 happened, if something was in there and it discharged<br/>     10 and the barrel was pointing backwards or something when<br/>     11 -- when you're bent over or something like that, just an<br/>     12 awareness thing to let people know that certain guns,<br/>     13 the way they're designed and everything, they can be<br/>     14 dangerous. And -- and Glocks -- and I -- and I -- I<br/>     15 like Glock, they're good shooters and everything else,<br/>     16 but there's something you need to know about them, and<br/>     17 they're -- they're -- they're (sic) got a dangerous<br/>     18 trigger guard there -- excuse me, a trigger that -- that<br/>     19 that activation switch, slash, safety is there, and if<br/>     20 it gets pushed down somehow with not your finger but<br/>     21 with anything else and it gets flush, then you could<br/>     22 accidentally have it discharge, and it was my concern for<br/>     23 the public.</p> <p>24 Q. So in your instance as you were holstering that<br/>     25 gun and an object other than your finger got into that</p> |         | <p>1 trigger guard area, that blade or tab trigger on the<br/>     2 Glock did not prevent your gun from discharging; is that<br/>     3 correct?<br/>     4 A. Yes.<br/>     5 MR. HAAZ: Object to form.<br/>     6 BY MS. DENNISON:<br/>     7 Q. I've got to ask that again because you said "yes"<br/>     8 over his "object to form." So I'm just going to ask you<br/>     9 one more time, if you could just pause and let Mr. Haaz<br/>     10 do his object to form, and then do your answer.<br/>     11 MR. HAAZ: I'll tell you what. I'll just<br/>     12 note my objection now, and you can ask him.<br/>     13 MS. DENNISON: Thanks, Sam.<br/>     14 BY MS. DENNISON:</p> <p>15 Q. Okay. So during this discharge incident that we<br/>     16 just saw, that tabbed trigger on the Glock pistol did<br/>     17 not prevent a foreign object from discharging your<br/>     18 pistol when your finger wasn't on the trigger; is that<br/>     19 correct?<br/>     20 A. Yes.<br/>     21 Q. Now, you were chief of police at the time of this<br/>     22 incident. How long had you been in law enforcement?<br/>     23 A. I come on in June of 1980.<br/>     24 Q. So in 2014, you were -- in January of 2014, you<br/>     25 were approaching 34 years of service with law</p>                           |                   |         |
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|            | <p>1 enforcement?<br/>     2 A. Yes.<br/>     3 Q. Were you with Connersville Police Department that<br/>     4 entire 34 years?<br/>     5 A. Yes. I spent four years in the military police<br/>     6 back in the 70s.<br/>     7 Q. Four years?<br/>     8 A. Yes.<br/>     9 Q. What branch?<br/>     10 A. United States Army.<br/>     11 Q. Thank you for your service.<br/>     12 What had you carried in your four years in<br/>     13 military police?<br/>     14 A. A 1911 .45, and they were -- they were purc --<br/>     15 they were Colts and Ithacas and Remingtons. The<br/>     16 government -- all the 1911s were all -- all the same<br/>     17 everything except they had several manufacturers that<br/>     18 made them, but they were all interchangeable in parts.<br/>     19 MS. DENNISON: All right. Those are all the<br/>     20 questions I have for you, sir. Mr. Haaz will have some<br/>     21 questions for you as well, so I'll turn it over to him.<br/>     22 EXAMINATION<br/>     23 BY MR. HAAZ:<br/>     24 Q. Mr. Counceller, could you hold up that holster<br/>     25 again so I could see the -- the indent on the leather?</p>  |         | <p>1 A. (Complying.)<br/>     2 Q. Thanks very much. And so there are three<br/>     3 numbers. It looks to me like, and you'll correct me if<br/>     4 I'm wrong, that that holster indicates it's designed for<br/>     5 three Glock models, there are three numbers after Glock,<br/>     6 right?<br/>     7 A. Yes.<br/>     8 MS. DENNISON: Objection to form.<br/>     9 BY MR. HAAZ:<br/>     10 Q. Okay. And what are the numbers?<br/>     11 A. Well, technically that is the same -- same frame<br/>     12 as -- a lot of the Glocks are the same. The calibers<br/>     13 wouldn't be --<br/>     14 Q. Sir, I'm just asking what are the three numbers<br/>     15 that are written on the holster.<br/>     16 A. Well, I'm having a little trouble looking at them<br/>     17 so just give me -- bear with me because I --<br/>     18 Q. Take your time.<br/>     19 A. I -- I can't make 'em out, sir. I'm looking at<br/>     20 them with a magnifying glass -- what's -- what's -- I'm<br/>     21 -- somebody else has got better eyesight than I got.<br/>     22 Okay, 7 -- 77, 22 and a 31. That must be the model<br/>     23 numbers. I'm familiar with the 22.<br/>     24 Q. Okay. So just so I understand, it's -- that<br/>     25 holster says Glock, and then the numbers are 77 and then</p> |                   |         |

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| 1          | --   |         | 1          | <b>1999.</b>  |         |
| 2          | A. It's correction to 17 --                                    |         | 2          | <b>Q. And you're still with Connersville Police</b>             |         |
| 3          | Q. Okay, so --   |         | 3          | <b>Department?</b>  |         |
| 4          | A. -- 22 and 31.   |         | 4          | <b>A. No, sir. I've been retired for 10 years.</b>              |         |
| 5          | Q. All right. So --  |         | 5          | <b>Q. Congratulations. So from '99 until about 2014,</b>        |         |
| 6          | A. The 17 is a 9 millimeter, but it's the same                 |         | 6          | <b>were you aware of any other unintended discharges with</b>   |         |
| 7          | frame. And also, just to clear it here, the 22 is -- is        |         | 7          | <b>Glocks from trigger contact by a foreign object like</b>     |         |
| 8          | the longer version of the 23. The 17 is a -- is --             |         | 8          | <b>yours?</b>   |         |
| 9          | these are like for 9 millimeters and 40s. So the 22 and        |         | 9          | <b>A. No.</b>   |         |
| 10         | 23 is -- the .40 caliber difference there, they're .40         |         | 10         | <b>Q. Prior to 1999, what did Connersville PD carry?</b>        |         |
| 11         | cal. Then the 9 millimeter is 17 and a 19. And so              |         | 11         | <b>A. Berettas, 92FS.</b>                                       |         |
| 12         | they're the same frame and all this. There's -- also           |         | 12         | Q. And am I correct that the Beretta 92 had a manual            |         |
| 13         | another number is 31, and 31 I don't know -- it -- it's        |         | 13         | safety?   |         |
| 14         | the same frame, but it could be a different length of          |         | 14         | MS. DENNISON: Objection to form. You can                        |         |
| 15         | the barrel or whatever. I don't -- I'm not sure.               |         | 15         | answer.   |         |
| 16         | Q. Sure, okay. And so just so I understand, the                |         | 16         | BY MR. HAAZ:  |         |
| 17         | numbers that are stamped on the holster you were using         |         | 17         | Q. Let me rephrase the question because there's an              |         |
| 18         | that day under the word "Glock" are 17, 22 and 31?             |         | 18         | objection.  |         |
| 19         | A. Yes.  |         | 19         | <b>What safeties did the Beretta 92 have, if any?</b>           |         |
| 20         | Q. And on the date of the incident, you were not               |         | 20         | <b>A. They had like five different safety features.</b>         |         |
| 21         | carrying a Glock 17, a Glock 22 or a Glock 31?                 |         | 21         | <b>They had a -- a lock that would -- would disconnect the</b>  |         |
| 22         | A. No.   |         | 22         | <b>trigger totally, and then you could flip the -- flip the</b> |         |
| 23         | <b>Q. How long has Connersville PD carried Glock</b>           |         | 23         | <b>back lever and it would -- it would go back into a fire</b>  |         |
| 24         | <b>pistols for?</b>  |         | 24         | <b>position. You could carry it unloaded -- of course if</b>    |         |
| 25         | <b>A. They started carrying them, I think, about '99,</b>      |         | 25         | <b>it's loaded, it could -- have it that way, or you can</b>    |         |
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| 1          | <b>have the hammer down -- it's a double action, a total</b>   |         | 1          | engaged, do you believe your unintended discharge would         |         |
| 2          | <b>different feature. And they say safety features, just</b>   |         | 2          | have happened?  |         |
| 3          | <b>like the 1911 in the Army back in the day, they talk</b>    |         | 3          | A. No.  |         |
| 4          | <b>about, you know, being -- being open, cocked open,</b>      |         | 4          | MS. DENNISON: Object to form.                                   |         |
| 5          | <b>that's a safety feature. Down with nothing in it is a</b>   |         | 5          | BY MR. HAAZ:  |         |
| 6          | <b>safety feature. For instance -- hold on just a second.</b>  |         | 6          | Q. Would it have been safer if your Glock pistol had            |         |
| 7          | <b>They're -- they're just a lot safer gun, and so was the</b> |         | 7          | an external manual safety?                                      |         |
| 8          | <b>.45. They didn't have the little -- little dog ear or</b>   |         | 8          | A. Possibly.  |         |
| 9          | <b>the little trigger in the trigger, so to speak.</b>         |         | 9          | Q. If it were engaged?  |         |
| 10         | Q. And why is it your opinion that the Beretta was a           |         | 10         | A. Yes.   |         |
| 11         | safer gun than the Glock?                                      |         | 11         | Q. I want to talk briefly about the -- the incident             |         |
| 12         | A. Because of the safety features it had.                      |         | 12         | itself. At the -- on the date of the incident, this was         |         |
| 13         | Q. Okay. And did the Glock have fewer safety                   |         | 13         | January 18th of 2014, were you still working at                 |         |
| 14         | futures than the Beretta?                                      |         | 14         | Connersville Police Department or were you retired?             |         |
| 15         | A. Yes.  |         | 15         | A. What -- could you give that date again?                      |         |
| 16         | Q. And is that because the Glock did not have a                |         | 16         | Q. Sure. It looks like from the security camera,                |         |
| 17         | manual safety that would prevent the trigger from              |         | 17         | the date of this incident was January 18th of 2014.             |         |
| 18         | pulling?   |         | 18         | A. Okay.  |         |
| 19         | MS. DENNISON: Objection to form.                               |         | 19         | Q. On that day, were you still employed with the                |         |
| 20         | A. True, that -- that's -- yeah, it --                         |         | 20         | Connersville Police Department?                                 |         |
| 21         | they're tot -- two different guns, totally, with the --        |         | 21         | A. Yes, I was the police chief.                                 |         |
| 22         | the whole thing is totally different.                          |         | 22         | Q. And how long after that did you retire?                      |         |
| 23         | BY MR. HAAZ:   |         | 23         | A. I retired in the end of 2015.                                |         |
| 24         | Q. All right. And if you had had a pistol on the               |         | 24         | Q. Okay. So were you on duty at the time of this                |         |
| 25         | date of the incident that had a manual safety and it was       |         | 25         | incident?   |         |

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| <p>1 A. No.</p> <p>2 Q. All right. Were you carrying your duty weapon?</p> <p>3 A. Yes.</p> <p>4 Q. And was the holster you were using that day your duty holster or personal holster?</p> <p>5 A. Personal holster.</p> <p>6 Q. All right, so that wasn't issued by the Connersville Police Department?</p> <p>7 A. No.</p> <p>8 Q. Where did you buy it?</p> <p>9 A. Honestly, I think I bought it at -- at a place called Jenkins. It's a -- in Indianapolis. It's a police supply store, and it was a used -- they used to have a big table of used leather or camo pouches or handcuff pouches. Just whole -- a lot of -- a lot of leather and some -- some plastic stuff that -- I think I bought it up there at -- a one-time use.</p> <p>10 Q. All right. So fair to say that the holster you were using on the date of the incident was not purchased from Glock or anything associated with a Glock store or --</p> <p>11 A. No, no.</p> <p>12 MS. DENNISON: Objection to form.</p> <p>13 BY MR. HAAZ:</p> <p>14 Q. And is it your understanding that the stamping on</p> | <p>1 your leather holster relates to what are the approved Glock models for that holster?</p> <p>2 MS. DENNISON: Objection to form.</p> <p>3 A. Yes.</p> <p>4 BY MR. HAAZ:</p> <p>5 Q. Did you see anything on the holster that, in any way, suggested that Glock had manufactured that holster?</p> <p>6 A. No, I doubt it.</p> <p>7 MS. DENNISON: Objection. Sorry, we're sort of speaking over each other, my apologies. I'm going to try to get my objections in faster. If you could just take like a quick breath before you begin your answer, we can get a clean record, Mr. Counceller. I don't want to step over you.</p> <p>8 BY MR. HAAZ:</p> <p>9 Q. You indicated that when -- and I can pull up part of the video, and I'll share my screen so we can go through it.</p> <p>10 All right. So I'm at about -- if I look at my notes, I think the security camera video starts at about 51 seconds so I'm going to start there and play a little bit.</p> <p>11 (Whereupon, a video is being played.)</p> <p>12 Q. All right. So at about 54 seconds, you've taken out your Glock 23, and it's in your right hand; would</p> <p>13</p> |         |            |                          |         |

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| <p>1 you agree?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And then about 56 seconds, you</p> <p>4 re-holster your Glock 23, right?</p> <p>5 A. Yes.</p> <p>6 Q. And you previously testified that when you</p> <p>7 re-holstered it, you felt resistance?</p> <p>8 A. Yes.</p> <p>9 Q. What do you mean?</p> <p>10 A. It just didn't -- I didn't know if I had my</p> <p>11 jacket -- you know, that there was -- sliding down on</p> <p>12 the side. It just -- it wasn't -- just moving in there</p> <p>13 real slow and so I just -- then it -- then it went, it</p> <p>14 went in. And so that's when I -- you know, after that,</p> <p>15 I went to pull my jacket up and put it underneath my</p> <p>16 jacket again, and that's when it discharged.</p> <p>17 Q. When you felt that resistance, it doesn't appear</p> <p>18 on the video that you kind of did a check to see what</p> <p>19 that resistance might be; is that -- is that correct?</p> <p>20 A. Well, I thought I did. You might have to run it</p> |                          |         |